SUPREME COURT

OCTOBER TERM, [illegible]

No. 18,732

THE STATE BOARD OF ASSESSORS OF THE
ORLEANS, THE CITY OF NEW ORLEANS
PELLADEN

vs.

THE COMPTOIR NATIONAL D'ESCOMPTE DE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
THE EASTERN DISTRICT OF LOUISIANA.

FILED NOVEMBER 21, 1888.

(18,732.)

14570

(18,732.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, *ET AL.*, APPELLANTS,

vs.

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	a	1
Bill of complaint	1	1
Order on bill of complaint for injunction	10	7
Submission by defendants of application for injunction	11	8
Bond for injunction	12	8
Injunction to the City of New Orleans	13	9
Marshal's return on injunction	14	10
Injunction to Geo. B. Penrose, treasurer of the city of New Orleans	15	10
Marshal's return on injunction	16	11
Injunction to State tax collector, first district of the city of New Orleans	17	11
Marshal's return on injunction	18	12
Answer	19	12
Replication	25	16
Agreement to appoint special examiner	26	17
Complainant's note of evidence	27	17
Testimony of Albert Breton, taken under commission	28	18
Testimony of Albert Breton before special examiner	37	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 16, 1903.

	Original.	Print
Defendants' note of evidence	51	34
Exhibit "A"—Testimony of J. H. Fulton and G. H. Green before R. H. Carter, special examiner	52	34
Testimony of J. H. Fulton, for defendants	52	35
Testimony of Gilbert H. Green, for defendants	54	36
Documents marked Exhibits "B," "C," "D," "E," and "F," being blank forms used by complainants in the conduct of their business	56	37
Exhibit "B"—Form of check	56	37
"C"—Form of authority to draw	57	38
"D"—Form in French	58	39
Translation of Exhibit "D"—Form in English	58½	39
Exhibit "E"—Form of agreement	59	40
"F"—Form of agreement	60	41
Document marked Exhibit "G," being blank form used by Commercial National Bank of the City of New Orleans in the conduct of business	61	42
Order of reference to W. W. Howe, special master	62	43
Report of special master	63	43
Exceptions to master's report	82	56
Motion to set exceptions for argument	84	57
Hearing and submission of exceptions	85	57
Order overruling exceptions and confirming report	85	57
Final decree	86	58
Petition and order for appeal	88	59
Assignment of errors	89	60
Bond for appeal	91	61
Citation of appeal	93	62
Proof of service of citation	94	63
Clerk's certificate	95	64

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

THE COMPTOIR NATIONALE D'ESCOMPTE DE Paris, Appellee,
versus
GEORGE B. PENROSE, Treasurer of the City of New Orleans; The Board of Assessors for the Parish of Orleans, and John Fitzpatrick, State Tax Collector for the First District of New Orleans, Appellants.
} No. 12949. In Equity.

Samuel L. Gilmore, Esquire, city attorney, and H. G. Dupre, Esquire, assistant city attorney, for George B. Penrose, city treasurer of New Orleans, E. K. Skinner, Esquire, for the Board of Assessors, Parish of Orleans, and F. C. Zacharie, Esquire, for John Fitzpatrick, State tax collector, appellants, Harry H. Hall, Esquire, for the Comptoir Nationale D'Escompte de Paris, appellee.

Appeal from the United States circuit court for the eastern district of Louisiana, New Orleans division, to the Supreme Court of the United States, returnable at the city of Washington, District of Columbia, within thirty (30) days from the sixteenth (16) day of October, A. D. 1902.

Transcript of Appeal

From the decree on exceptions of defendants to the report of the special master.

1 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
CITY OF NEW ORLEANS ET ALS.
} No. 12949.

Bill of Complaint.

Filed April 22, 1901.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in equity:

The Comptoir National D'Escompte de Paris, a corporation duly organized under the laws of the Republic of France, domiciled in the city of Paris, Republic of France, brings this, its bill of com-

plaint against The Board of Assessors for the Parish of Orleans, The City of New Orleans, a political corporation duly organized and created under the laws of the State of Louisiana, against Geo. B. Penrose, treasurer of the said city of New Orleans; and against John Fitzpatrick, State tax collector of the 1st assessment district of the city of New Orleans, all citizens of the State of Louisiana, domiciliated and residing within the jurisdiction of this honorable court.

1. And thereupon, your orator complains and says that the said Comptoir National D'Escompte de Paris, is a corporation created by and existing under the laws of the Republic of France and having its principal office for the transaction of business and its domicile in the city of Paris, and is a citizen of the said Republic of
2 France within the meaning of the laws fixing and determining the jurisdiction of this honorable court.

2. And your orator further shows that the said defendants above named are citizens of the State of Louisiana within the meaning of the laws fixing and determining the jurisdiction of this court.

3. That since 1895, complainant, after complying with all the requirements of the laws of the said State of Louisiana, established, in this city of New Orleans, an agency or office for the purpose of selling exchange and, incidentally to said exchange business and for the purposes thereof, it has advanced money upon the agricultural products of this State and other States adjacent thereto, said agricultural products being destined for shipment to foreign countries; and it has also loaned money upon said agricultural products while stored in warehouses in the city of New Orleans, in every instance, however, obtaining the money thus loaned by the sale of its exchange on New York or other cities of the United States or of foreign countries.

Your orator avers that it has no capital in the city of New Orleans and that all the money employed by it, for the purposes of its aforesaid business, is obtained by the sale of exchange on commercial centers outside of the State of Louisiana, and that the capital and credit used by it in securing the sales of said exchange is situated and exists wholly without the State of Louisiana and notably in the city of Paris, France.

Your orator avers that its aforesaid business was distinctly recognized by the legislature of the State of Louisiana which, by act No. 127 of 1898, levied upon said business a license tax of 2½ % on the gross receipts of "all moneys paid and all exchange bought and sold by it."

That complainant has paid this tax regularly to the city of New Orleans and the State of Louisiana, as well as other taxes legally levied against its property.

3 4. And your orator further shows that, in compliance with section 25 of the act of the legislature of Louisiana of 1898, p. 360, within twenty days after the list for such purpose was left at its place of business, to-wit: in January 1901, it made due and legal return, in proper form, duly sworn to, of all of its said property in the parish of Orleans and State of Louisiana and which was liable

for either municipal or State taxes and that the only money or property belonging to your orator in the said State and parish, *were:*

Office furniture	$1,000.00
Money in possession, on deposit or in hand	$20,000.00

5. Your orator further shows that notwithstanding the above true and attested statement made by it, the board of assessors for the parish of Orleans for the year 1901, made the following assessment against your orator:

"*Money loaned on interest, all credits, and all bills receivable for money loaned on interest, or advanced or for goods sold, $175,000.00.*"

6. Your orator further shows that while the assessment rolls for the parish of Orleans and the city of New Orleans, showing the above described assessment against your orator, were, under the provisions of the revenue laws of the State, being exposed, during the month of March 1901, your orator caused the same to be examined and, upon ascertaining that there appeared upon the said assessment rolls for the first municipal district and second representative district of the city of New Orleans, the above described assessment, your orator made and delivered a written application under oath, in full conformity with all the requirements of the revenue acts *acts* of the State of Louisiana to the said board of assessors, demanding that the said assessment upon "*money loaned on interest, all credits and all bills receivable for moneys loaned on interest, or advanced or for goods sold, $175,000.00,*" should be entirely cancelled by reason of the fact that all the credits and bills receivable belonging to your orator
4 were only assessable and taxable at its domicile in the city of Paris, France, where all of said credits and bills receivable were held and situated, and not in the city of New Orleans;

And your orator avers that the said board of assessors refuse to comply with said just, proper and legal demand of your orator.

7. And your orator further shows that, between the 21st. day of March and the 10th. day of April 1901, being the year in which the said illegal assessment was made, your orator addressed a written communication, in strict conformity with the provisions of the statute therefor provided, to the committee on the revision of assessments of the city council of the city of New Orleans, calling their attention to the said application previously filed with the said board of assessors and renewing the demand therein contained, and further asking that the said assessment be cancelled by reason of the fact that your orator has not and had not in the city of New Orleans any money loaned on interest, credits, etc., and your orator shows that said committee declined to hear your orator and it was deprived of the hearing provided by law and demanded by it, and that said illegal assessment was allowed to remain upon the assessment rolls of said city and State, and said committee refusing to act and cancel the said assessment, the cancellation of which was thus demanded;

And your orator avers that the above mentioned return and said

application addressed by it to the board of assessors and to the committee on the revision of assessments are in the possession of the said board of assessors, they having the same filed among the records of their office.

8. Your orator further shows that, during the year 1900 it has retained *no credits or bills receivable for moneys loaned on interest or advanced, or for goods sold*, but that whenever it has advanced money, as aforesaid, on bills of lading, warehouse receipts or otherwise, which it has taken therefor, it has not retained in
5 the city of New Orleans or the State of Louisiana any promissory note or other evidence of said credit, but that the said money has been loaned or advanced directly by the granting to the borrower thereof, a credit directly upon your orator's domicile in Paris and that it has not or has it had at any time during this year of 1901 in the State of Louisiana or the city of New Orleans any bills receivable or evidences of any such indebtedness nor has it had nor has it now in the city of New Orleans, and State of Louisiana any evidence of credits, all of the same being held at your orator's domicile in the city of Paris, France.

And your orator avers that it has not and had not in the city of New Orleans or the State of Louisiana, during the year 1901, any of the things thus assessed against it as of the value of $175,000.00, to-wit:

"*Money loaned on interest, all credits, bills receivable for money loaned on interest, or advanced or for goods sold.*"

And your orator shows that it will pay to the city of New Orleans the tax upon the one thousand dollars of furniture assessed against it, and upon the $20,000.00 of money in possession, on deposit, or in hand which it admits to be due, and that it has offered to pay or will offer to pay as soon as it may do so, the tax upon the same to the State tax collector without prejudice, that the said State tax collector has refused to accept the same or any sum less than the said entire illegal tax.

Further, your orator shows that under the Constitution laws and jurisprudence of the United States and the State of Louisiana, the power of taxation of the said State of Louisiana and the city of New Orleans, is limited to persons, property and business within the jurisdiction of the State and that no tax can be levied upon property which is not located either actually or constructively within the State seeking to levy the tax.

Your orator avers that debts are not property and that non-residents, in virtue of debts due to them, cannot be considered as
6 holders of property within the limits of the State for the purpose of taxation; that debts have their situs at the residence or domicile of the creditor and can only be taxed there and not elsewhere.

And your orator further avers that said attempted assessment and the legislation by virtue of which it is sought to be applied to said credits, are illegal, unconstitutional and void, in as much as they undertake to exercise the power of taxation on property situated

without the limits of this State or city; and that it does not lie within the power of the State or the city of New Orleans to tax property having its situs in other countries, your orator averring that jurisdiction is as essential to taxation as to the validity of a judgment and that no tax can be levied when the thing sought to be taxed is not amenable to the authority of the government which levies the tax.

Further your orator shows that said legislation and the attempted construction thereof are unconstitutional and violative of the 14th amendment of the Constitution of the United States, which says:

"Nor shall any State deny to any person within its jurisdiction the equal protection of its laws, nor deprive any person of property without due process of law."

And your orator further shows that the aforesaid treasurer of the city of New Orleans, and the said State tax collector have persisted and insisted upon the enforcement of the collection of taxes for the city of New Orleans and for the State of Louisiana, based upon the erroneous, illegal and void assessment, aforesaid, and they have demanded and will continue to demand of your orator the payment of the said city and State tax for the year 1901, levied upon the assessment aforesaid, to-wit: $4,550.00 and have threatened the seizure and advertisement of the property of your orator to pay said illegal taxes:

That your orator fears and believes that said Geo. B. Penrose, treasurer, and John Fitzpatrick, State tax collector, will exe-
7 cute the threats made, as above and will proceed with the illegal seizure and advertisement of the property belonging to your orator, and that the injury arising therefrom and inflicted thereby upon your orator would, if committed, be irreparable and irremediable; that your orator is entitled to the protection of this honorable court to prevent the threatened seizure aforesaid;

That your orator is not in any way or form indebted unto this city and State upon said illegal tax assessments.

10. Further your orator avers and so charges that, notwithstanding said return made and said written application to said board of assessors and to the committee on the revision of assessments of the city council of New Orleans, and the demands made for the cancellation of the said illegal assessments aforesaid, that the said assessors, committee and said treasurer and State tax collector combining, colluding and confederating together with the fraudulent intent of harassing, injuring and opposing your orator and depriving it of its property persisted and persists in this wrongful assessment, suffering your orator to be harassed as aforesaid and insisting upon the maintainance of said illegal and void assessment; and upon the collection of the tax for 1901, upon said assessment, all of which property so assessed is outside and beyond the jurisdiction of the said board of assessors and of the said treasurer and said State tax collector and is not located in the city of New Orleans and in the State of Louisiana;

That the acts and doings of said assessor and the said committee

on the revision of assessments, and the entering upon the rolls of said assessment and retaining them after the written protests and demands for its cancellation, are illegal and fraudulent and contrary to equity and good conscience;

That the threatened seizure and sale of the property belonging to your orator to pay and satisfy the illegal taxes levied upon said money assessments amounting to the sum of $4550.00 will occasion as your orator believes and fears, a multiplicity of suits which should be avoided and prevented.

8 That your orator is without adequate remedy at law, and that in order to prevent the spoliation and waste of the property, as aforesaid, and the expense and litigation growing out of the threatened seizure and attempted sale, aforesaid, of said property which will cause a multiplicity of suits, your orator is entitled to invoke the equitable writ of injunction forbidding and enjoining the City of New Orleans, Geo. B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector of the first district of the city of New Orleans, from seizing, advertising or attempting to *sale* any of the property, rights or credits belonging to your orator, to pay and satisfy the illegal taxes based upon the illegal assessments above referred to, to-wit:

"*Moneys loaned on interest, all credits, or bills receivable for moneys loaned on interest and advanced, or for goods sold, $175,000.00*, under the false pretense and subterfuge that your orator is liable for such taxes.

Wherefore, your orator prays:

First. That it may please your honors to grant unto your orator the most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said City of New Orleans, its officers, agents, attorneys and representatives, Geo. B. Penrose, treasurer of said city, and John Fitzpatrick, State tax collector of the first district of the city of New Orleans, enjoining, forbidding and prohibiting them, and each of them, in any way or by any proceedings whatever from enforcing the collection of the said taxes based upon the illegal assessments hereinabove complained of, and from seizing, advertising, selling or attempting to sell any property whatever belonging to your orator to pay and to satisfy any demand or claim for said illegal taxes assessed for the year 1901 against the property of your orator.

Second. That the above named assessments and municipal and State taxes thereon levied, as aforesaid, be decreed to be illegal, void and of no effect and in violation of the Constitution and

9 laws of the United States and of the State of Louisiana and that said assessments be ordered to be erased and cancelled from the assessment rolls of 1901.

Third. That your orator may have such other and further order, decree and relief in the premises as may be equitable.

Fourth. That the preliminary injunction herein to be issued be made peremptory and perpetual.

Fifth. And may it please your honors to grant unto your orator

a writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the City of New Orleans, through its mayor, Paul Capdeville, to John Fitzpatrick, State tax collector, to Geo. B. Penrose, treasurer and to the Board of Assessors for the Parish of Orleans, commanding them and each of them by a certain day and under a certain penalty to be inserted, to be and appear before this honorable court in equity, then and there to answer the premises under oath, and further to stand and abide by such order and decree therein as shall be agreed in equity and good conscience.

Sixth. And your orator further prays for costs and for all general and equitable relief, and as in duty bound, he will ever continue to pray.

COMPTOIR NATIONAL D'ESCOMPTE
DE PARIS,
(Signed) By A. BRETON, *Agent.*

(Signed) HARRY H. HALL,
Solicitor for Complainant.

A. Breton, being duly sworn, deposes and says that he is the agent and attorney in fact of the Comptoir National D'Escompte de Paris that he has read the bill of complaint in this cause and knows the contents thereof, and that all the facts therein stated, are true to the best of affiant's knowledge and belief.

(Signed) A. BRETON, *Agent.*

Sworn to and subscribed before me, this 13th, day of April, 1901.
(Signed) PURNELL M. MILNER, *Not. Pub.*

10 U. S. Circuit Court, Eastern District of La.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

In equity.

The application for an injunction *pendente lite* being submitted to the court upon the written submission of the solicitors for the defendants and in view of the argument herein heard in the equity suit between the same parties, No. 12,908 of the docket of this court and the conclusion therein reached by the court, and considering the law and the allegations of the bill of complaint which has been sworn to and not contradicted:

It is ordered that upon the complainant giving bond with good and sufficient surety, as the law requires in the sum of eight thousand dollars, an injunction *pendente lite* issue and remain in force during the pendency of these legal proceedings prohibiting and enjoining the City of New Orleans, Geo. B. Penrose, treasurer and the State tax collector of the first district of the city of New Orleans

from seizing, advertising, selling or attempting to sell any of the property, rights or credits belonging to the Comptoir National D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein.

N. O. April 27th, 1901.

(Signed) CHARLES PARLANGE, *Judge.*

11 U. S. Circuit Court, Eastern District of La.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS. } No. 12949.

In equity.

Whereas, an application has been made for an injunction *pendente lite* in the above case, wherein the bill of complaint was filed on the 22nd. of April, 1901; and whereas, the right to the issuance of said injunction was fully argued in the pleadings between the same parties, No. 12908 of the docket of this court,

Now, therefore, we the undersigned, solicitors of the city of New Orleans, board of assessors and the State tax collector, hereby submit the application herein for an injunction *pendente lite*, with the understanding that should such order be allowed, complainant will furnish a bond to be signed by the same surety in the full sum of eight thousand dollars.

(Signed) H. G. DUPRE,
Ass't City Att'y, Solicitor for the City of N. O.

(Signed) E. K. SKINNER,
Solicitor for Board of Assessors.

(Signed) F. C. ZACHARIE,
Solicitor for State Tax Collector.

12 *Bond of Injunction.*

Filed May 6, 1901.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS. } No. 12949.

(2 cancelled 10c. U. S. int. rev. documentary stamps.)

Know all men by these presents, that we The Comptoir Nationale D'Escompte de Paris as principal and The Fidelity and Deposit Company of Md. as security, are held and firmly bound unto The City of New Orleans, Geo. B. Penrose, treasurer, and tax collector of 1st dist. of N. O. in the sum of eight thousand dollars, lawful money of the United States of America, to be paid to said defendants in injunction, their heirs, executors, administrators, and assigns,

for which payments well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly, by these presents.

Sealed with our seals and dated the 4th day of May in the year of our Lord 1901.

Whereas, the said Comptoir National D'Escompte de Paris has presented a petition to the honorable the U. S. circuit court for the eastern district of Louisiana, praying for a writ of injunction.

Now the condition of the above obligation is, that we, the above bound Comptoir Nationale D'Escompte de Paris, the Fidelity and Deposit Company of Md. will well and truly pay the said City of New Orleans, Geo. B. Penrose, treasurer and the tax collector of first dist. of city of N. O., the defendants in said injunction, all such damages as they may recover against us in case it should be decided that the injunction was wrongfully obtained.

Signed, sealed and delivered in the presence of—

Attest: WARNER & BLACK,
General Agents,
By J. E. WARNER.

FIDELITY AND DEPOSIT COMPANY
OF MD.,
(Signed) By P. M. MILNER, *Local Director*.
[SEAL.]

13 *Injunction.*

Issued May 6th, 1901.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The President of the United States of America to the City of New Orleans, Greeting:

Whereas, it has been represented unto us in our said circuit court on the part of the Comptoir National D'Escompte de Paris in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said City of New Orleans, your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from seizing, advertising, selling or attempting to sell any of the property, rights or credits belonging to the Comptoir National

D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein and that you remain so inhibited and enjoined during the pendency of these legal proceedings until the further order of our said court in the premises.

Witness, the Honorable Melville W. Fuller, Chief Jus-
[SEAL.] tice of the Supreme Court of the United States, at the city of New Orleans, this 6th day of May in the year of our Lord, 1901.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

14 *Marshal's Return on Injunction.*

Filed May 6th, 1901.

Received by U. S. marshal, New Orleans, La., May 6th, 1901 And on the 6th day of May 1901 I served a copy hereof on the City of New Orleans, La., by handing the same to Paul Capdevielle, mayor of the city of New Orleans, La.

(Signed) CHAS. FONTELIEU,
U. S. Marshal,
By J. H. PATIN,
D'y U. S. Marshal.

15 *Injunction.*

Issued May 6th, 1901.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The President of the United States of America to Geo. B. Penrose, treasurer of the city of New Orleans, Greeting:

Whereas, it has been represented unto us in our said circuit court on the part of the Comptoir National D'Escompte de Paris in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Geo. B. Penrose, treasurer of the city of New Orleans, your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from seizing, advertising, selling or attempting to sell any of the property, rights or credits

belonging to the Comptoir National D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein and that you remain so inhibited and enjoined during the pendency of these legal proceedings until the further order of our said court in the premises.

Witness, the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, at the city of New Orleans, this 6th day of May, in the year of our Lord, 1901.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

16 *Marshal's Return on Injunction.*

Filed May 6th, 1901.

Received by U. S. marshal, New Orleans, May 6th, 1901 And on the 6th day of May 1901 I served copy hereof on Geo. B. Penrose, treasurer of the city of New Orleans, La. By handing the same to him in person in the city of New Orleans, La.

(Signed) CHAS. FONTELIEU,
U. S. Marshal,
By J. H. PATIN,
Deputy U. S. Marshal.

17 *Injunction.*

Issued May 6th, 1901.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The President of the United States of America to the State tax collector of the first district of the city of New Orleans, Greeting:

Whereas, it has been represented unto us in our said circuit court on the part of the Comptoir National D'Escompte de Paris in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said State tax collector of the first district of the city of New Orleans your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from seizing, advertising, selling or attempting to sell any of the property, rights or

credits belonging to the Comptoir National D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein and that you remain so inhibited and enjoined during the pendency of these legal proceedings until the further order of our said court in the premises.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, at the city of New [SEAL.] Orleans, this 6th day of May, in the year of our Lord, 1901.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

18 *Marshal's Return on Injunction.*

Filed May 6th, 1901.

Received by U. S. marshal New Orleans, La. May 6th, 1901 And on the 6th day of May 1901 I served copy hereof on the State tax collector of the first district of New Orleans, La., at his office. By handing the same to Chas. E. Letten, a clerk of the said tax collector whom I found in charge of said office. The State tax collector of the first district of New Orleans La. being out of the city at the time, all of which I found out by interrogating the said Chas. E. Letten clerk in charge of said office in the city of New Orleans, La.

(Signed) CHAS. FONTELIEU,
U. S. Marshal,
By J. H. PATIN,
D'y U. S. Marshal.

19 *Answer.*

Filed May 16th, 1901.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS; JOHN FITZPATRICK, State Tax Collector; Geo. B. Penrose, Treasurer of the City of New Orleans, and City of New Orleans. } No. 12949.

The joint and several answer of the Board of Assessors for the Parish of Orleans, the City of New Orleans; Geo. B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector for the first district, parish of Orleans, to the bill of complaint of the Comptoir Nationale D'Escompte de Paris.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of

exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer thereto, answering say:

1st. That respondents and defendants admit the first allegation of fact in plaintiff's bill contained, namely, that said Comptoir Nationale D'Escompte de Paris is a corporation created under the laws of the Republic of France and having its principal office for the transaction of its business in the city of Paris.

20 2nd. Respondents and defendants admit the allegations contained in article 2 of complainant's bill.

3rd. Respondents and defendants especially and particularly deny all the allegations contained in complainant's third article, except in so far as to admit that said complainants are doing business in the city of New Orleans.

4th. Respondents and defendants admit the allegations contained in the fourth article of complainant's bill, in so far as it is therein alleged that said complainant made a return of what it claimed to be taxable property, but they deny all other allegations thereof.

5th. Respondents and defendants admit the allegations of fact *and* contained in the fifth article of complainant's bill of complaint to be true and correct.

6th. Respondents and defendants admit the allegations contained in the sixth article of complainant's bill in so far as it relates to the application for cancellation of the assessment therein described, and refusal to do so by the Board of Assessors, respondents and defendants herein, and these respondents and defendants deny all other allegations thereof.

7th. Respondents and defendants admit the truth of the allegations contained in the seventh article of complainant's bill in so far as it is alleged therein that application — made to the board of review for cancellation of the assessment therein described, but deny all other allegations therein contained, and especially and particularly deny that complainant was in any way deprived of any hearing provided by law, or that it was refused the same.

8th. Respondents and defendants deny all the allegations contained in the eighth article of complainant's bill, and especially deny that complainant retains no capital in the city of New Orleans, or that all of the money used in its said business in the city of New Orleans is supplied by the selling of exchange or that said money when received in the city of New Orleans

21 is remitted at once to Paris, France, but, on the contrary, these respondents and defendants aver that when money is received from and paid by the debtor in the city of New Orleans to said complainant said money is not remitted to Paris, France or elsewhere, but is retained in said city and loaned out, to other persons. Respondents and defendants further deny that said complainant has not retained in this city or State and has not therein any credits or bills receivable for money loaned on interest or advanced, or that

whenever it has advanced money during the past year or the current year on bills of lading or warehouse receipts that it has taken therefor non-negotiable obligations, and respondents and defendants especially deny if such be the case that said notes have been sent and transmitted to Paris or London where they are held by complainant, but on the contrary, respondents and defendants aver and charge that all evidences of indebtedness due by any parties to said bank growing out of business done in this city and State, however represented, remain in this city and State in the possession of said complainant and within the taxing power of the State of Louisiana and city of New Orleans; and respondents and defendants further aver and charge that even if it were the case that said notes and bills were remitted to France as alleged in complainant's bill, that said notes and bills would yet be liable to taxation in the State of Louisiana in view of the nature of these transactions, and that said taxation would not be in violation of the Constitution, laws and jurisprudence of the United States or the State of Louisiana, and respondents and defendants further aver and charge that if said business is now conducted as alleged by said complainant the same is done for the obvious purpose of escaping legal assessment and taxation and to escape the decision handed down by the supreme court of this State in the case of Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors, reported in 52 La. Ann., p. —.

9th. Respondents and defendants admit the allegations contained in the ninth article of complainant's bill in so far as it is charged therein that the State tax collector and the city of New Orleans, and the treasurer of said city, will insist upon the payment of
22 said tax of the year 1901, and would proceed to seize and advertise complainant's property to satisfy said tax if not prevented by orders of court; but, respondents and defendants especially deny that there would be any irreparable or irremediable injury to complainant inasmuch as complainant could properly, in an action at law, proceed against the aforesaid officers and city for reimbursement in case such seizure and collection should be declared illegal.

Respondents and defendants aver that complainants are fully indebted unto the city of New Orleans and State of Louisiana upon the full assessments made by said board of assessors as herein complained of, and same should be maintained by this honorable court.

10th. Respondents and defendants admit the allegation contained in the tenth article of complainants' bill in so far as it is therein alleged that the State and city officers above mentioned have declined to accede to complainants' demand for cancellation of the assessments for the year 1901, but respondents and defendants deny all other allegations therein contained, and especially deny that said property so assessed is outside and beyond the jurisdiction of the board of assessors and of said treasurer, said city and said tax collector, and further deny that said property is not located in the city of New Orleans and State of Louisiana, but, on the contrary, respondents and defendants aver that for purposes of taxation said property is within the jurisdiction of the State of Louisiana to the

assessed amount of $175,000.00 being money loaned on interest or credits or bills receivable for moneys loaned on interest or advanced, or for goods sold, and that said assessment is neither illegal nor contrary to equity and good conscience.

Respondents and defendants further deny that the threatened proceedings of the officers of the State of Louisiana and the city of New Orleans to collect such tax will occasion any multiplicity of suits to protect complainants' alleged rights in the premises, and re-
23 spondents and defendants especially deny that complainant is without adequate remedy at law, but on the contrary aver that it has ample and sufficient remedy at law and that these respondents and defendants should not be enjoined and forbidden from further proceeding in the premises, and respondents and defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, and without this that there is no other matter, cause or thing in the said bill contained for these respondents and defendants to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these respondents and defendants.

All of which matters and things these respondents and defendants are willing to aver, make and prove as this honorable court shall direct, and these respondents and defendants submit to this honorable court that all the matters and things in the said bill mentioned and complained of are matters which may be tried and determined at law and with respect to which the said complainant is not entitled to any relief in a court of equity and these respondents and defendants hope that they shall have the same benefit of this defence as if they had demurred to the said complainants' bill, and respondents and defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and respondent tax collector prays that there be awarded to the attorney of the State tax collector ten (10 %) per cent. on the aggregate amount of the tax and penalties herein involved, or so much thereof as may be decreed by this honorable court to be maintained.

Respondents and defendants further pray that the writ of injunction herein improvidently issued be dissolved with dam-
24 ages as provided by the laws of the State of Louisiana in such cases made and provided.

(Signed) H. G. DUPRE,
Ass't City Attorney,
(Signed) SAM'L L. GILMORE,
City Attorney,
Solicitors for the City of New Orleans.
(Signed) E. K. SKINNER,
Solicitor for Board of Assessors,
(Signed) F. C. ZACHARIE,
Solicitor for State Tax Collector,
Respondents and Defendants.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, the undersigned authority, on the 15th day of May, 1901 Paul Capdevielle, mayor of the city of New Orleans, Geo. B. Penrose, treasurer of the city of New Orleans, John Fitzpatrick, State tax collector, and Geo. C. Preot, president of the board of assessors, acting herein in their respective capacities, who being first duly sworn did depose and say that they have read the above and foregoing answer to the bill of complaint of the Comptoir Nationale D'Escompte de Paris, and that the facts and allegations therein contained are true to the best of their knowledge and belief.

(Signed) PAUL CAPDEVIELLE, *Mayor.*
(Signed) GEO. B. PENROSE, *Treasurer.*
(Signed) GEO. C. PREOT,
Pres'd't Board of Assessors.
(Signed) JOHN FITZPATRICK,
Tax Collector, 1st District, Orleans Parish.

Sworn to and subscribed before me, notary this 15 day of May, 1901.

[SEAL.] (Signed) BERNARD C. SHIELDS,
Not. Pub.

25 *Replication.*

Filed May 30, 1901.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The replication of The Comptoir National D'Escompte de Paris, complainant, to the answer of the defendants, The Board of Assessors, John Fitzpatrick, State tax collector; The City of New Orleans, and George B. Penrose, treasurer of the city of New Orleans.

This replicant saving and reserving unto itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold issufficiencies of the said answers, for replication thereunto says that it will aver maintain and prove its said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied to by this replicant without that, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied,

is true, all of which matters and things this replicant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

Jan. 23rd. 1901.

(Signed) HARRY H. HALL,
Complainant's Solicitor.

26 *Argeement to Appoint Special Examiner.*

Filed Nov. 13th, 1901.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET AL. } No. 12949.

By agreement of counsel for respective parties, it is hereby ordered that R. H. Carter be and he hereby is appointed to act as special examiner of this court to take orally, such testimony as the parties hereto desire to be taken in this city and to report the same to this court, with all convenient speed, said testimony when so taken, to be used on the trial of this cause.

N. O. May — 1901.

We, the undersigned hereby consent to the appointment of R. H. Carter, special examiner.

(Signed) HARRY H. HALL,
Sol. for Compl't.

(Signed) E. K. SKINNER,
Att'y Board of Assessors.

(Signed) H. G. DUPRE,
Ass't City Att'y.

(Signed) F. C. ZACHARIE,
Solicitor for Tax Collector.

27 *Note of Evidence.*

Filed January 13, 1902.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS,
vs.
BOARD OF ASSESSORS. } No. 12949.

Counsel for complainant offers, produces and files in evidence the testimony of Albert Breton taken under commission and herein filed on July 2nd, 1901, and his testimony taken by consent before R. H. Carter, special examiner on the 21st of November, 1901.

It is admitted that the complainant is a corporation organized under the laws of France, and is a citizen of that Republic, domiciled in Paris, France.

N. O. Jan. 5th. 1902.

28 Deposition of Albert Breton, of Paris, France, taken on the 25 September, 1901, for complainant in case of Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors *et als.*, No. 12949, U. S. circuit court, eastern district of Louisiana, before John K. Gowdy, U. S. consul general at Paris, France, at the U. S. consulate, 36 Avenue de l'Opera, Paris, France, under a commission issued out of the clerk's office of the U. S. circuit court, eastern dist. of La., at New Orleans, La., on July 9, 1901, in the above entitled and numbered cause, and returned and filed October 7th, 1901.

Harry H. Hall, solicitor for complainants.
Sam'l L. Gilmore, city attorney, and H. G. Dupre, ass't city att'y, solicitors for City of New Orleans and Geo. B. Penrose, treasurer of city of New Orleans.
E. K. Skinner, solicitor for Board of Assessors.
F. C. Zacharie, solicitor for State Tax Collector.

Int'y # 1. What is your name, occupation and present place of residence?
To the first interrogatory he saith as follows.
My name is Albert Breton; I am a banking employee, and I reside at Colombes, Seine, France.
Int'y # 2. What official connection have you had with the Comptoir National D'Escompte de Paris?
To the second interrogatory he saith as follows:
I was the local agent of their agency in New Orleans, La.
Int'y # 3. If in reply to interrogatory No. 2 you say that you have been the local agent of said comptoir in the city of New Orleans and therein represented it, please state how long you have been thus its represen-ative?
To the third interrogatory he saith as follows:
I was there from the year 1895 until April, 1901.
Int'y # 4. What has been the character and nature of the business done by the Comptoir National in New Orleans, during your said connection therewith.
To the fourth interrogatory he saith as follows:
29 The business was that of a general foreign exchange business, carrying the advancing of money on products of the State of Louisiana and other Southern States, such products being destined for shipment to foreign countries or to be stored in the different warehouses of the State of Louisiana.
Int'y # 5. If in reply to interrogatory No. 4 you say that it has done a business of selling exchange in the city of New Orleans, and for the purposes thereof, has advanced money upon the agricultural products of the State and other States adjacent thereto, such products being destined for shipment to foreign countries and that it has also loaned money on said agricultural products and other property while stored in warehouses in the city of New Orleans, state

whence you as agent of said Comptoir National obtained the money thus advanced and thus loaned?

To the fifth interrogatory he saith as follows:

The money was obtained by drawing foreign exchange on Europe.

Int'y #6. What capital, during the time aforesaid, had and up to the present time, has the Comptoir National in the city of New Orleans?

To the sixth interrogatory he saith as follows:

There has never been a fixed capital, but we had on an average twenty thousand ($20,000) dollars deposited in the local banks.

Int'y #7. If in answer to interrogatory No. 6 you say that said Comptoir National had and has no capital or a limited capital in the city of New Orleans, please state fully where its capital, if any, is located.

To the seventh interrogatory he saith as follows:

All the capital of the Comptoir National is located in Paris, France, where the head office of the company is situated.

Int'y #8. Are you familiar with the provisions of act 127 of the *the* General Assembly of Louisiana of 1898, which levies a license tax of 2½ % on the gross receipts of all moneys paid and all exchange bought and sold?

To the eight interrogatory he saith as follows:

Yes.

30 Int'y #9. If you reply that you are familiar with the said act of the legislature, please state fully of what your knowledge of said act consists.

To the ninth interrogatory he saith as follows:

In the year 1898 there was introduced in the Louisiana legislature an act levying a prohibitive licence tax on the business the Comptoir National was doing in New Orleans. I therefore decided to appear before the ways and means committee of the legislature in Baton Rouge and show the inconvenience of such an act by the legislature. After a few hearings and consultations with the auditor of the State, now His Excellency Governor W. Heard, and Doctor Peter Trezavant of Shreveport, who was then chairman of the ways and means committee, the ways and means committee adopted at my own suggestion the act No. 127 of 1898, which was passed by the legislature. It was then understood, as Doctor Trezevant testified before the civil district court of Louisiana, that this act 127, of 1898, would include all taxes to be paid by the agency in New Orleans.

Int'y 10. Has complainant or not, paid any taxes under said act 127 of 1898? If so, what was the amount of said taxes and when were they paid?

To the tenth interrogatory he saith as follows:

Yes, we paid the taxes due, according to such act in the years 1899, 1900, and 1901. I cannot remember exactly the amounts paid but the aggregate sum for each year has ranged from two thousand five hundred dollar*d* ($2,500.00) to three thousand five hundred dollars ($3,500.00).

Int'y 11. What steps, if any, did you take looking to the cancellation from the assessment rolls of the city and parish of Orleans, of the following assessments levied against the Comptoir National for the year 1901.

"Moneys loaned on interest, all credits and bills receivable for moneys loaned on interest or advanced or for goods sold, $175.000,00"?

To the eleventh interrogatory he saith as follows:

I took the legal steps to say that I made an application for abatement tending to the cancellation of the assessment before the board of assessors of the city of New Orleans, but my application was not granted.

31 Int'y # 12. During the years 1900 and 1901 state what credits, or bills receivable for moneys loaned on interest or advanced, or for goods sold, the Comptoir National had or retained in the city of New Orleans or State of Louisiana? State fully whether or not it received for moneys loaned or advanced, any promissory notes, or bills receivable, during said years.

To the twelfth interrogatory he saith as follows:

We did not receive promissory notes or bills receivable because our clients preferred and insisted to be simply overdrawn, so as to be able to reimburse us the whole or part of our advances at their convenience at any date they might choose.

Int'y # 13. If in reply to interrogatory No. 12, you state that the agency of the Comptoir National in the city of New Orleans, did not during the years 1900 and 1901 take any bills receivable or promissory notes for moneys loaned or advanced by it on bills of lading, goods in warehouses or otherwise, state fully what acknowledgement or evidence of said indebtedness was taken by said Comptoir National D'Escompte de Paris through you as its agent in the city of New Orleans or through any one else representing it?

To the thirteenth interrogatory he saith as follows:

Our clients used to draw cheques on the Comptoir National giving at the same time sufficient collateral to cover their drawings. There was no — representing the Comptoir National in 1900 or 1901 but myself in New Orleans, and therefore all business was done through me.

Int'y # 14. What is the business of the Comptoir National, and what has been the business during the existence of its agency in the city of New Orleans.

To the fourteenth interrogatory he saith as follows:

The business is and always has been that of a general foreign exchange business.

Int'y 15. If in reply to interrogatory No. 14 you state that its business has been the sale of exchange, what has been the purpose and object of its loaning money or advancing money on

32 warehouse receipts, bills of lading or other securities?

To the fifteenth interrogatory he saith as follows:

The object was to pay in advance the amount of foreign exchange bought by us, as drafts and bills of lading relating to same could not be delivered before the shipment of the goods to Europe, the

object was also to comply with the request of the local merchants who wanted to facilitate and develop the handling through New Orleans of products bought in the interior of the Southern States. Another object was also the employment of funds arising from exchange on Europe sold in advance at high rates in view of remitting the same funds back to Europe at lower rates.

Int'y # 16. What advantages, if any, has the Comptoir National D'Escompte de Paris, in dealing in exchange, and what profit does it make in the interest received by it on loans, over and above the amount of interest which it pays to banks or other financial agencies?

To the sixteenth interrogatory he saith as follows:

The profits from foreign exchange form the difference between the nett rate of selling and the nett rate at which we can rebuy to cover such sales. The foreign exchange business is — very erratic one as far as the profits are concerned, but I may state that the difference between the selling and purchasing prices ranges from fifty cents (50c.) to one dollar and a half $1.50 per thousand dollars ($1,000.00). As far as profit on interest is concerned it depends entirely on the rates of interest ruling in Europe and the United States. Sometimes the rates of interest in the United States has been up to four per cent. (4%) above the European rate, but sometimes it has also happened that money was cheaper in the States than in Europe. In the latter case the loss of interest is compensated by the profit in a foreign exchange deal. In the above statement I have not taken into consideration the exceptional rates ruling occasionally in the New York stock market.

Int'y # 17. Please state further any facts within your knowledge tending to prove or proving that there are no credits or bills receivable for moneys loaned on interest or advanced or for goods
33 sold or moneys loaned on interest in the city of New Orleans and the State of Louisiana belonging to the Comptoir National de Escompte de Paris and that there have been none such during the years 1900 and 1901.

To the seventeenth and last direct interrogatory he saith as follows:

As already stated our clients keep simply overdrawn accounts and we give them the facility to make the re-imbursement total or partial, at their own convenience and whenever they please. As far as the credits are concerned, our credits are issued and drawn on Paris and London and are to be re-imbursed in these places at their respective due dates.

Cross-examination:

Cross int'y # 1. If in reply to direct int'y No. 2 you state that you were the agent of the plaintiff company in the city of New Orleans during the years 1897 to 1901, inclusive, please state, in detail the character of business transacted by your company in the city of New Orleans and the State of Louisiana during those years, and give in detail the methods pursued by you in these transactions. State fully every step of the negotiations between your company and any indi-

vidual seeking and receiving a loan therefrom, from the time of the application for such a loan up to the time of its repayment, and annex to your answers hereto copies of any blank forms used by your company in such connection?

To the first cross interrogatory he saith as follows:

The character of the business transacted by the agency of the Comptoir National in New Orleans, is that stated in act 127, of 1898, of the Louisiana legislature, the dealing in foreign exchange carrying the advance of money as already stated in my previous answers When a client needs money he draws a cheque on and hands us at the same time sufficient security to cover the amount drawn. The money thus obtained by him may be re-imbursed at any time either with foreign exchange or by cash. To get the money ad-
34 vanced we draw on Paris, London or Berlin as the case may be. When the money is re-imbursed we remit it back to Europe through a foreign exchange transaction. When a client wants to use a credit for a fixed period of time we open for his account a credit to be utilized by drawing on Paris or London and the amounts drawn against such credits are to be remitted to Paris or London before the maturity of the drafts accepted by our correspondents. I have here no copies of blanks at my disposal.

Cross int'y #2. If you state in your answers that you require of a borrower that he should give you as an evidence of his indebtedness a negotiable or non-negotiable note, please describe such note in full, state what becomes of it from the time that it is given to your agent in New Orleans up to the time of the close of the entire transaction? If in reply to the above interrogatory you state that such negotiable or non-negotiable note is sent outside of the State of Louisiana at any time during such transaction, please state if it is ever returned to this State, by whom, through whom, and to whom.

To the second cross interrogatory he saith as follows:

As already stated, a client draws cheques on us which are kept by the accountant as cash vouchers. When we use foreign credit, drafts are issued on our foreign correspondents and such drafts are sold to the New York banks and remitted by these banks to their agents in Europe. These drafts never come back to America.

Cross int'y #3. If in reply to any of the above cross interrogatories you have stated that you require collateral security for any loans that you make, please state what becomes of such collateral during the time for which the loan is made, and if you state that such collateral is sent state where it is sent, by whom it is sent, to whom it is sent, and please state further, if the same is ever returned, and if so by whom and to whom?

To the third cross interrogatory he saith as follows:

The collateral referred to is kept in trust in New Orleans by the accountant both for the account of the client and the Comptoir National. As there is frequent necessity of handling and ex-
35 changing the documents composing the collateral it is quite impossible to send it out of the State of Louisiana.

Cross int'y #4. If in reply to your first interrogatory you have

stated that you were the representative of the plaintiff company in this city and State during the years 1897 to 1901, inclusive please state wherein the conduct of your business during the years 1900 and 1901 differs from the conduct of your business for previous years? If you state that the business differs, among other respects, in the fact that non-negotiable notes given you by borrowers were, during the years 1900 and 1901, sent outside of the State of Louisiana, will you please state whether this change in the method of your business was made as a result of the decision of the case of the Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors by the supreme court of Louisiana, and reported in 52 Ann., page 1319 etc., wherein an assessment similar to the one complained of in the present suit was maintained? Please state what your deposits in the State of Louisiana aggregated in each of the years 1900 and 1901 and what were the cash balances on hand by your company at the end of each month? Please state the amount of your loans in this city and State during each of those years?

To the fourth cross interrogatory he saith as follows:

There was a change in the conduct of our business in 1900 and 1901 as mentioned in the cross interrogatory, but the reason of that change was due to the complaints we received from our clients who wanted us to do as other local institutions were doing, that is to say to allow them to be simply over-drawn instead of requiring notes to be signed by them. The average of our cash balances with the local banks during 1900 and 1901 reached an aggregate amount of twenty thousand dollars ($20.000.00) more or less. I cannot remember and therefore I cannot state fully how much money we had each month in the New Orleans banks most of our advances are against foreign exchange dealings, and they last as a rule between five and thirty days. There is a continual renewal of such dealings and advances, which taken together during the year will give
36 rather a large amount, which however cannot be considered as a fixed loan. It is quite impossible for me to say and I cannot make an exact statement here in Paris of the total amount of our advances during the years 1900 and 1901.

Cross-int'y ≠5. Please state where you obtain the money with which to carry on the business conducted by you in this city and State and what becomes of the sums collected by you from time to time, upon repayment of loans previously made by you.

To the fifth and last cross interrogatory he saith as follows:

The money needed by the agency of the Comptoir National in New Orleans comes from foreign exchange, drawn on London, Paris Berlin, &c. wherever the rates are most advantageous, and all money collected in New Orleans is remitted in the same way to Europe in a re-imbursement of each previous drawing.

(Signed) ALBERT BRETON.
A. BRETON.

(Signed) JOHN K. GOWDY,
Commissioner.

Examination of the above witness, reduced to writing by George E. Light, a disinterested person, and by the witness subscribed and sworn to in my presence this twenty six- day of September, A. D. 1901.

(Signed) JOHN K. GOWDY,
[SEAL.] *U. S. Consul General, Paris, Commissioner.*

37 *Testimony of Albert Breton for Complainant.*

Filed January 13, 1902.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
THE BOARD OF ASSESSORS ET ALS. } No. 12949.

Testimony taken in the above numbered and entitled cause on behalf of complainants, on the 21st day of November, 1901, at the office of H. H. Hall, Esq., New Orleans, La., before R. H. Carter, Esq., special examiner herein.

Appearances.

Harry H. Hall, Esq., solicitor for complainant.
F. C. Zacharie, Esq., representing respondents.
H. G. Dupre, Esq., " "
E. K. Skinner, Esq., " "
S. L. Gilmore, Esq., " "

38 The solicitor for the complainant, upon objection having been urged by the solicitor for respondents that Mr. Albert Breton who had testified in Paris under commission is at present in the city of New Orleans and should be orally examined, states that he has requested Mr. Breton to appear before the examiner in the case, and in the presence of counsel, to give them an opportunity of such further cross examination as they may see fit to propound.

ALBERT BRETON, after having been duly sworn, was examined on behalf of complainant, and testified as follows:

Direct examination

By Mr. HALL:

Q. Mr. Breton, are you the gentleman formerly the agent of the Comptoir Nationale D'Escompte de Paris, New Orleans, who testified in this case in Paris under commission, which I now show you?
A. Yes sir.
Q. Are you still the agent of, or have you any connection with the Comptoir Nationale D'Escompte de Paris?
A. No sir.
Q. When did you sever that connection?
A. In August, 1901.

Q. Have you returned to New Orleans, permanently or is your visit here temporarily.
A. Temporary.
Q. You answered interrogatories and cross-interrogatories under this commission.
A. Yes sir.
Q. Those answers are true and correct?
A. Yes sir.

Offer.—Counsel for complainant offers the commission in evidence and tenders the witness to counsel for respondents for examination

Cross-examination.

By Mr. ZACHARIE:

39 Q. I understood you to say, Mr. Breton, that you severed your connection with the Comptoir National D'Escompte de Paris, last August?
A. Yes sir.
Q. Do you know of your own knowledge, how the business is carried on at present?
A. I have not seen any business since the day I left here.
Q. When did you leave here?
A. In May, last May.
Q. Then you don't know of your own knowledge, how that business has been carried on since you left here last May.
A. No sir.
Q. Do you know how much was to the profit of the interest account of this company last year?
A. No sir, I would have to look at the books.
Q. Could you state about?
A. No sir. If you will allow me I will give you the reason, because the interest account and the exchange are mixed up.
(Mr. HALL: Not kept separate.)
A. They are kept separate but if you want to make a statement you have to go into detail.

Mr. ZACHARIE:

Q. Well, state, if you can, about what proportion of the business was profits on the interest account and what proportion of profits on the exchange account, I do not ask you to state exactly.
A. I am under oath, I can't answer that just by——
Q. I do not ask you to state exactly; I say whether you can state about?
A. There is no proportion to establish, because it depends sometimes how the exchange varies in your favor or not. You may make a transaction, combined transaction both on exchange and interest, sometimes interest might give you 80 per cent. and 20 per cent. in exchange, and sometimes you might get 95 per cent. on exchange and 5 per cent. on interest, sometimes you have a profit on

exchange and a loss on interest. That is what we call the arbitrage business.

Q. In answer to the fourth interrogatory, under this commission, you say that the business was that of a general foreign ex-
40 change business carrying the advance of money on products of the State of Louisiana and other Southern States, such products being destined for shipment to foreign countries or to be stored in different warehouses of the State of Louisiana. Do you mean to say that all of your dealings were on goods or bills of exchange on goods destined to be shipped to foreign countries?

A. Yes sir.

Q. Or did you not lend money on agricultural products of Louisiana stored in different warehouses of the State of Louisiana which were not to be shipped abroad?

A. Well, yes, I lent money on agricultural products, some of them I could not know if they were shipped or not, but the bulk of the business done was against products which were to be shipped away from the State of Louisiana.

Q. Can you state how large a portion of your business was done in exchange on such products to be shipped from Louisiana, how large a proportion and what proportion of the business was upon agricultural products of Louisiana not to be shipped from Louisiana.

A. It will be about 80 per cent. on one side and 20 per cent. on the other side.

Q. 80 per cent., on which side?

A. On agricultural products destined to be shipped from Louisiana.

Q. And about 20 per cent.——

A. On products which I could not know whether they were shipped or not.

Q. Did you not, or didn't this Comptoir National D'Escompte de Paris lend or advance money on warehouse receipts?

A. Yes sir.

Q. Did it not lend or advance money on State bonds, United States bonds or city bonds.

A. Occasionally on city bonds, and State bonds and premium bonds.

Q. When in answer to the fifth interrogatory you say the money was obtained by drawing foreign exchange on Europe, you mean to say that the cash which you lent in the city of New Orleans was obtained by drawing this foreign exchange on Europe and getting it cashed here in the banks.

41 A. Getting it in New York.

Q. And the cash was forwarded to you from New York?

A. Yes sir.

Q. And that was the money that you lent?

A. Yes sir.

Q. Do you know, or can you state approximately, the amount of loans that you made during the year 1900?

A. No, I cannot.

Q. About.

A. Well, I made so many loans you know only for a short period, and I can't state the total amount, it would be too far away, the exact amount.

Q. Was it over a million dollars?

A. Taken it altogether, yes.

Q. How much over a million?

A. I do not know.

Q. Was it ever two millions?

A. No sir.

Q. As I understand you, a great many of these loans were for short periods, so that you turned the money over and over again during the year?

A. Yes sir.

Q. You state in answer to the sixth interrogatory, that there never has been a fixed capital, but we had on an average twenty thousand dollars deposited in the local banks. Do you mean to say by that, that during the whole year of 1900, you had altogether during that year, not more than twenty thousand dollars deposited in the local banks?

A. As an average, yes sir.

Q. You say in answer to the seventh interrogatory, that all the capital of the Comptoir National D'Escompte de Paris, is located in Paris, France where the head office of the company is situated. I suppose that you mean by that, that that is the general headquarters where the business is carried on and as you need capital here to carry on the business you would draw on that capital in Paris?

A. No sir.

Q. By bills of exchange?

A. No sir, the capital of the Comptoir National D'Escompte de Paris stays in Paris all the time, anything we draw comes
42 from the surplus deposits they have on the other side.

Q. The surplus deposits?

A. To carry that business in France.

Q. Yes, then to cash these bills of exchange you do not draw from the capital but from the surplus deposits?

A. And from the credits open in our favor by other banks too.

Q. In your answer to the ninth interrogatory you say, that His Excellency Governor Heard and Doctor Peter Trezevant of Shreveport who was then chairman of the ways and means committee adopted at my (that is you-) suggestion, the act 127 of the Acts of '98 which was passed by the legislature, it was then understood as Doctor Trezavant testified before the civil district court of Louisiana, that this act 127 of the Acts of '98 would include all taxes to be paid by the agency in New Orleans. What suit, if any, did Doctor Trezanant testify in?

A. He testified in a suit brought by the State of Louisiana against the Comptoir National D'Escompte de Paris.

Q. For what?

A. For the five years' license claimed, $42.000. It was after the passage of that bill, right after.

Q. That testimony was taken down in writing?

A. Yes sir, to the best of my belief.

Q. Was that the cancellation of the assessment of a tax, or was it a license suit?

A. It was a license suit.

Q. You say in answer to the eleventh interrogatory, that "I took legal steps to see that I made application for abatement tending to the cancellation of the assessment before the board of assessors of the city of New Orleans, but my application was not granted. Did you make any application to the commit-ee of review of the city council?

A. Yes sir.

Q. In reply to the *tewlfth* interrogatory you state in sub-
43 stance, that you did not take any promissory notes or bills receivable because your clients preferred and insisted on being overdrawn so as to be able to reimburse in whole or in part the advances at their convenience at any other day they might choose. What sort of evidence of indebtedness did you take?

A. Well, they drew a check.

Q. They drew a check on you?

A. Yes sir.

Q. You had no due bill?

A. No sir.

Q. This was in the ordinary form of check, pay to the order of so and so?

A. Yes sir.

Q. And you simply retained that check when you cashed it?

A. Yes sir.

Q. Less your discount?

A. We got no discount we paid the check in full.

Q. Now in reply to the thirteenth interrogatory, you say "giving at the same time sufficient collateral to cover their drawings." What form did the taking of that collateral assume?

A. They gave us bills of lading warehouse receipts or railroad bills of lading or steamship bills of lading, warehouse receipts.

Q. Did you give a receipt for them?

A. No sir.

Q. They simply manually delivered——

A. Yes sir.

Q. —these bills of lading or warehouse receipts. There was no written understanding by which you could proceed on them to forfeit them?

A. Yes sir, there is a general letter of hypothecation which they gave.

Q. Which was in the nature of a pledge, was it not?

At the request of the solicitors for respondents, counsel for com-plai-ants states that he will furnish a copy of that mandate of hypothecation.

A. I want to state that that letter, that general letter of hypothecation does not apply to loans, simply loans, it applies to any other kind of business that we may transact, either loans — exchange credits, everything, you will see it yourself when you read it.

Q. It is in the nature of a pledge?

A. No sir.

44 Q. In reply to the fourth interrogatory, you say the business is and always has been that of a general foreign exchange business. I suppose you mean by that, that in all your transactions here you got your money here to invest, by drawing exchange?

A. No, I mean to say that every transaction made begins by foreign exchange transaction and ends by foreign exchange transaction that the thing is settled by drawing and by exchange.

Q. Just explain what you mean by settled.

A. When I draw exchange I have in view to make a profit by any way I can. Sometimes I will draw and buy right away, I mean to say in a very short period, and I make a profit on exchange. Sometimes I sell exchange and I buy for forward delivery against it and I have to calculate at what rate of interest I can employ the funds coming from such sale of exchange. If the rate of interest is larger than the loss in exchange, I will lose in the transaction. Sometimes in exchange the difference between the price of sale and the price of purchase is large enough to allow me to borrow money on the other side at a higher rate, even than I can get here. That was the case four years ago when the interest showed $700 profit.

Q. The sum and substance, I understand, of the exchange business is that whatever money you loaned out in whatever form it might be the money was raised by exchange?

A. Yes sir.

Q. You state in answer to the first cross-interrogatory, somewhat the same as you already state in this cross interrogatory, but you said I have here no copies of blanks at my disposal—I believe that refers to the character of the drafts?

A. Yes sir.

Q. Could you supply them?

A. Yes sir.

Q. Well please do so.

A. All right. I wish to state—you asked me a while ago when Col. Zacharie mentioned the suit brought by the State for five years' back license, you asked me Colonel Zacharie, asked me if

45 it was a suit for abatement of assessment; of course I said no, but I want to state that we had never been assessed in that way as we are now up to that date. There was no case for abatement of assessment because we had not been assessed in that way up to that date.

By Mr. DUPRE:

Q. Have you been the agent of the complainant in this suit up—from the inception of the business?

A. Yes sir.

Q. Up to last August?

A. Up to last April.

Q. Was the business conducted during the year 1900 by the Comptoir National D'Escompte de Paris, in this city, the same business that had been transacted right along by that company; the nature of the business is the same?

A. Yes sir.

Admission.—It is admitted by counsel that the character and method of conducting the business has not been changed since April last when Mr. Breton left the office.

Q. Wherein does the method of conducting the business during the year 1900, differ from the method you conducted that business, in the year- '97 and '98, if any?

A. It is only up until 1900 we took—some clients gave us promissory notes.

Q. When did you cease taking those promissory notes?

A. In 1900.

Q. The first of the year 1900?

A. Yes sir.

Q. As long as you were taking those notes, Mr. Breton, you never sent them outside of the State of Louisiana, did you?

A. Very seldom, sometimes but very seldom.

Q. You retained those notes in this city?

A. Yes sir.

Q. Did you testify in the case of The Comptoir National D'Escompte de Paris, *vs.* The Board of Assessors, in the civil district court for this parish?

A. Yes sir.

Q. Reported in the 52nd Annual?

A. Yes sir, I know before Judge St. Paul.

46 Q. You stated in your testimony there, that in the conduct of your business you used two forms of blanks, one which reads as follows — promise to pay to Comptoir National D'Escompte de Paris — for value received with interest at the rate of — per cent. per annum until paid. This note is not negotiable and is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment—or should the drawer hereof when called on—refuse or fail to keep the margin hereon good, the Comptoir National D'Escompte de Paris is authorized to sell the said securities at public or private sale, without recourse to legal proceedings, applying the proceeds of sale towards payment of within note. C. 2." Is that blank in use by your company?

A. No sir.

Q. Why was it discontinued?

A. It was discontinued because all the local banks used to allow their clients to overdraw like they do now, and the clients objected to having to sign notes.

Q. When was that discontinued, when was the use of that form discontinued?

A. I cannot state the exact date. The first of 1900.

Q. You testified to the use in your business of the following blank: "No. — New Orleans —— 189– Received from the agent of the Comptior National D'Escompte de Paris — dollars — on account of — exchange on — arising from shipment and from measures taken preparatory to the shipment of — per — for — which is covered by policies of insurance against fire and marine risks and which policies are hereby bound and pledged specifically to — for the fulfillment of the contract to furnish the exchange agreed to and for the money here advanced in case of the non-completion of the contract from any cause." Is that blank in use in your business?

A. No sir.

Q. Was it in use during the year 1900?

A. No sir.

Q. Was this change in your business made in pursuance to the decision of the——

47 A. No sir. As I told you before, it was on account of the demand made by clients asking to do what all the local institutions did.

Q. Do you mean to say that other local institutions do not take promissory notes?

A. They take them but not in the kind of foreign exchange business we do, they do not take them as a rule most of the clients are overdrawers.

Q. Did you charge interest on your overdrafts?

A. Yes sir.

Q. Well, what evidence of indebtedness besides the account on your books with your customers, have you, that these people owe you anything at all?

A. We have a regular settlement which we make every month.

Q. When you put $50.000 we will say, to the credit of one of your customers, on your books, does he give you any receipt for your money previous to your crediting him with that on your books?

A. I do not credit him, I pay him.

Q. You pay him——

A. Yes sir I pay him the money.

Q. What evidence have you that he owes you anything?

A. I have got a check from him, he is overdrawn on my books.

Q. For the amount you have loaned him?

A. Yes sir.

By Mr. ZACHARIE:

Q. Suppose a man comes to you and says, Here, I have got certain securities, certain warehouse receipts or bills of lading, I want to borrow $50.000, you say to him We will let you have it. Now he

deposits with you these bills of lading or these warehouse receipts or these bonds or whatever you choose to accept as security for the loan. Do you*b* give him a receipt for those?

A. No. I am going to explain the business. Well, a client comes to me and says to me, and says I want $50.000, and I propose to give you such collateral, bills of lading for cotton or for grain or warehouse receipts or bonded warehouse receipts for cotton or for cake or cotton seed meal, any kind of those products. *It* I approve, ready to do the business, I say Yes; well, there are two ways
48 of letting him — that money, very often I open a credit in his favor on the Comptoir National D'Escompte de Paris in Paris or in London, then he draws against that credit, I mean to say he sells his draft on the comptoir to anybody he please, either in New Orleans or New York, if the loan is for a short period instead of asking him to draw I will draw it myself and hand him the money.

Q. You sell your own exchange?

A. Then he *in* overdrawn on my books and to show that he is overdrawn I tell him you draw a check on me and he gives me that check. And then I make him sign a general letter of hypothecation (which will be shown to the attorney) Outside of that we have nothing of importance, I don't see anything else.

Q. These securities and checks remain in your office here in New Orleans?

A. Yes sir, the checks are cash vouchers for the cashier who has them to show that he paid the money.

Q. Suppose that the amount drawn by him does not come up to the amount of the value of this hypothecation, this hypothecated stuff, what is done there, at the close of the transaction?

A. The general letter of hypothecation does not state any amount It states simply it is a power of attorney.

Q. I say what is done when the transaction is concluded. He has got all of the money that you agreed to give him and the collaterals in your hands are worth more than that What do you do there?

A. We have a margin. You mean to say if the collateral is worth more than the money we give him?

Q. Yes?

A. Then we have a margin; then we are protected if there is a fall in the price of the securities he gives us.

By Mr. DUPRE:

Q. Does he take back the check he has given?

A. No sir.

Q. When the transaction is concluded what becomes of that check that he has drawn against your bank?

A. The check is a cash voucher, it stays among the cash vouchers of the day on which it is paid and remains perpetually in the
49 custody of the Comptoir National D'Escompte de Paris, for the cashier to show that he has paid that check.

Q. In other words it is not returned to the man when he pays his debt?

A. Because we keep an account current which varies each day.

Q. The agent of the Comptoir National D'Escompte de Paris in New Orleans has full authority to act for the Comptoir National D'Escompte de Paris in this city?

A. Yes, sir.

Q. He does not have to confer by cable or other-wise with his principals in Paris or France as to whether he will make one loan or another, a particular loan?

A. He has authority to loan certain amounts or make certain transactions by exchange according to the instructions he has from the other side.

Q. I mean, if I went in there he would not have to cable to ask about me?

A. No, sir.

By Mr. ZACHARIE:

Q. In other words you have general instructions in regard to the manner——

A. We have a power of attorney.

Q. And do not need to consult them about any particular contract which you make?

A. No, sir.

Re-direct examination.

By Mr. HALL:

Q. Won't you repeat what you have just stated as a reason why your customers wanted to give drafts upon the amount which you agree to loan them, by checks rather than promissory notes?

A. It is because they by drawing checks on us then they keep a sort of account current constantly overdrawn and they pay back any day they please the whole or part of the money they loan from the Comptoir National D'Escompte de Paris.

Q. And how about interest?

A. And in that way they are only charged interest on their daily overdrafts.

50 Q. Whereas if they give a note for the entire amount?

A. Whereas if they give a note for the entire amount, they need not, first, when they first call on us——

Q. Whereas if they give a note for the entire amount they pay interest upon the entire amount as evidenced by the note?

A. Yes sir.

By Mr. DUPRE:

Q. What is the aggregate amount of the daily overdrafts of your customers during the year 1900, in other words what did you lend them practically?

A. It vary so much I can't make it accurate. In summer——

Q. I don't say what was the average, what was the aggregate amount?

A. I can't tell exactly. I will ask you to see the books for that.

Agreement.—It is agreed between counsel that the testimony taken at this sitting shall be used on the trial of the case of The Comptoir National D'Escompte de Paris *vs.* The Board of Assessors No. 12.908 now also pending in the United States circuit court for this district.

51 *Note of Evidence in Behalf of Defendants.*

Fuled Jan'y 13/1902.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS ET ALS. } No. 12949.

The defendants introduce in evidence the following:

(1) The testimony of J. H. Fulton & Gilbert H. Green, taken on December, 6, 1901. before R. H. Carter, special examiner on behalf of defendants, marked Exhibit "A."

(2) Documents marked Exhibits "B" "C" "D" "E" & F, being blank forms used by complainants in the conduct of their business.

(3) Document marked Exhibit "G" being blank form used by Commercial national bank of this city in conduct of business similar to that of complainants.

52 EXHIBIT "A."

Filed January 13th, 1902.

Testimony of J. H. Fulton and G. H. Green for Defendants.

United States Circuit Court. Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* CITY OF NEW ORLEANS ET ALS. } No. 12949.

Testimony taken in the above numbered and entitled cause on behalf of defendant- on the 6th day of December, 1901, before R. H. Carter, Esq., special examiner herein, at the office of H. H. Hall, Esq., in the city of New Orleans.

Appearances.

H. G. Dupre, Esq., F. C. Zacharie, and E. K. Skinner, Esq., representing defendants.

Harry H. Hall, Esq., representing complainant.

J. H. FULTON, witness sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By Mr. DUPRE:

Q. Mr. Fulton, you are the president of the Commercial national bank?

A. I am the manager.

Q. *Are you familiar with the business of foreign exchange as conducted in the city of New Orleans?*

53 A. Yes sir; that is one of the branches of our bank.

Q. Will you please state how that business is conducted in your department when loans are made by your department on foreign exchange.

A. How it is conducted?

Q. Yes? What evidence is taken of the indebtedness?

A. We take a receipt for the money.

Q. Have you a blank form of that receipt?

A. No sir.

Q. I mean at your bank, not with you?

A. Yes sir.

Q. Will you kindly supply a blank form of receipt?

A. Yes sir.

Q. Do you require that when you loan money and collateral is given you that any other evidence of indebtedness shall be given you in the way of a note?

A. Not against exchange loans, exchange advances.

Q. Are these receipts surrendered by you when the transaction is closed?

A. Usually.

Q. Is that the method of doing that particular line of business in the city of New Orleans, to your knowledge?

A. I don't know anything about the methods of other banks, that is our method.

Q. I mean other banks?

A. I don't know anything at all about their methods.

By Mr. ZACHARIE:

Q. Mr. Breton was on the stand the other day as a witness here in the Comptoir National D'Escompte de Paris case and he stated that his manner of doing business in regard to bills of exchange was adopted from the manner of doing that business by the banks. He states "If a client comes to me and says to me, he says I want $50,000 and proposes to give you such collateral, bills of lading for cotton or for grain or warehouse receipts or bonded ware-

54 house receipts for cotton or for cake or cotton seed meal, any kind of those products; if I approve I am ready to do business, I say Yes; well there are two ways of letting him have that

money. Very often I open a credit in his favor on the Comptoir National D'Escompte de Paris in Paris or in London, then he draws against that credit, I mean to say he sells his draft on the comptoir to anybody he pleases either in New Orleans or New York; if the loan is for a short period instead of asking him to draw I will draw it myself and I hand him the money." "You sell your own exchange?" Answer. "Then he is overdrawn on my books and to show that he is overdrawn I tell him you draw on me and he gives me that check simply and then I make him sign a general letter of hypothecation (which will be shown to the attorney) Outside of that we have nothing of importance, I don't see anything else." Now, is that the manner in which you do business?

A. Yes sir, we do business in that way with some of our customers.

Q. Do you, or not, in addition to what he says here, take receipts to show the amount of money he has received?

A. When the credit is given by an overdraft, no receipt is taken.

Q. What evidence then, have you, of the indebtedness?

A. Merely his checks on our bank.

Q. That is the sole evidence of the loan?

A. Yes sir.

Q. How much of the business is done in that way, out of the volume of business of the day?

A. That I cannot answer.

Q. State approximately?

A. How much is done in that way in New Orleans?

Q. No, in your bank, the amount of your business, what proportion is done?

A. I could not answer that from memory at all.

No cross examination.

GILBERT H. GREEN, witness sworn and examined on behalf of defendants, testified as follows:—

55 Direct examination.

By Mr. DUPRE:

Q. Are you connected with any banking institution in the city of New Orleans?

A. I am manager of foreign exchange in the Whitney national bank.

Q. You have heard this extract read from the testimony of Mr. Albert Breton taking at a previous hearing of this case?

A. Yes sir.

Q. Will you state whether the method of doing business by your bank is similar to that stated by him?

A. You mean in connection with foreign exchange business?

Q. Yes, only?

A. For all advances on exchange we invariably take a receipt as

an evidence of indebtedness, they attach the collaterals to this receipt, for advances against exchange, which shows the exact amount we advance against them.

Q. You have no other evidence of indebtedness?

A. No sir, this receipt takes the place of it.

Q. Do you know what is the custom in the other banks in the city of New Orleans?

A. As far as I know they follow the same rule we do.

Q. Were you formerly connected with any other foreign exchange department in this city?

A. Yes sir. I was four years manager of the foreign exchange department of V. & A. Meyer, I organized that business myself, and I had that rule, I was then for three years the manager of the foreign exchange department at Julius Weis and Son, and there we had exactly the same rule, I invari-bly took a receipt for the amount of money advanced on the exchange, with the collaterals attached to it, bills of lading attached to it.

No cross examination.

56 *Documents Marked Exhibits "B," "C," "D," "E," and "F," Being Blank Forms Used by Complainants in the Conduct of Their Business.*

Offered by Defendants and Filed January 13th, 1902.

"EXHIBIT B."

No..... NEW ORLEANS, ..., 190

Comptoir National d'Escompte de Paris,

Pay to.....or order

.....dollars.

$..... .....

[Printed across the face:] Original

No..... NEW ORLEANS, ..., 190

Comptoir National d'Escompte de Paris,

Pay to..... .....or order

.....dollars.

$..... .....

[Printed across the face:] Duplicate

57 "EXHIBIT C."

Comptoir National d'Escompte de Paris.

Capital, francs 150,000,000.

Cable address: Comptonia New Orleans.

NEW ORLEANS, ...

Credit No.....

We hereby authorize.....
.....
to draw on the Comptoir National d'Escompte de Paris in.....
at.....for account of..... .....
for the cost of..... .....
to be shipped.....
to the extent of.....
.....
each bill to be covered by all shipping documents, say consular invoice and full set of bills of lading filled up to the order of .....
.....insurance against marine risk to be effected in.....
The consular invoice and one bill of lading to be sent direct to
.....

And we hereby agree with the drawers, endorsers and *bona fide* holders of bills drawn in compliance with the terms of this credit that the same shall be duly honored on presentation to the Comptoir National d'Escompte de Paris in..... .....if drawn and negotiated at any time within.....
from this date, such bills to be accompanied by an abstract of invoice and all the bills of lading issued except the one sent direct to
.....

All drafts to be signed as being drawn against credit No.....
dated, New Orleans,.....and to be advised in original and duplicate to the Comptoir National d'Escompte de Paris in.....

____ ____,

For the Comptoir National d'Escompte de Paris,
New Orleans Agency.

58 "EXHIBIT D."

Comptoir National d'Escompte de Paris.

Capital, francs 150,000,000.

Adresse telegraphique, Comptonia New Orleans.

NEW ORLEANS, ..., 190

.....

Credit No. .....

D'ordre et pour compte de .....
nous ouvrons aupres de vous un credit documentaire.....
en faveur de.....
jusqu'a concurrence de..... .....
contre remise des documents d'usage afferents a une expedition
a .....
de .....
L'assurance maritime sera soignee a..... .....

Nous vous prions d'informer les beneficiaires de l'ouverture du present credit que nous emettons valable jusqu'au.....
et dont vous vous rembourserez par notre debit.....

Veuillez bien nous adresser directement les documents et agreez nos salutations empressees.

——— ———,
Le Directeur.

58½ *Translation of Exhibit "D."*

Comptoir National d'Escompte de Paris.

Capital, francs 150,000,000.

Cable address: Comptonia New Orleans.

NEW ORLEANS, ..., 190

.....

Credit No. .....

By order and for account of.....
we open with your good selves a documentary credit.....
in favor of..... .....
up to amount of.... .....
against delivery of ordinary shipping documents of .....
of .....
insurance policy to be effected in .....

Please advise beneficiaries of above credit in their favor which we issue available until.....
and to be reimbursed by our debit with .....

Please send us direct documents, yours truly,

——— ———, *Agent.*

59 "EXHIBIT E."

Know all men by these presents, that the undersigned, in consideration of financial accommodations given, or to be given or continued to the undersigned, by the Comptoir National d'Escompte de Paris, Paris, hereafter called "The Comptoir," hereby agree with the said Comptoir, that whenever the undersigned shall become or remain, directly or contingently, indebted to the said Comptoir for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any endorsement, check, draft, guarantee, or in any manner whatsoever, or upon any claim, the said Comptoir shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise against the undersigned, or his or their executors, administrators or assigns, namely:

1. Said Comptoir or their agents or assigns, shall at all times have the right to require from the undersigned that there shall be lodged with said Comptoir or with their agents or assigns, as security for all existing liabilities of the undersigned to said Comptoir approved collateral securities to an amount satisfactory to said Comptoir, and upon the failure of the undersigned, at all times, to keep a margin of securities with said Comptoir for such liabilities of the undersigned, satisfactory to said Comptoir, then all liabilities of the undersigned to said Comptoir shall, at the option of said Comptoir become immediately due and payable, notwithstanding any credit or time allowed to the undersigned, by any instrument evidencing any of the said liabilities.

2. All securities deposited by the undersigned, with said Comptoir or with their agents or assigns, as collateral to any such overdraft or indebtedness of the undersigned to said Comptoir shall be held by said Comptoir as security for any other liability of the undersigned to said Comptoir, whether then existing or thereafter contracted; and said Comptoir shall also have a lien upon all property of the undersigned of every description left with the said Comptoir in any way, as security for any liability of the undersigned to said Comptoir now existing or hereafter contracted.

3. Upon the failure of the undersigned, either to reimburse any overdraft as soon as requested to do so by said Comptoir or their agents or assigns, or to pay any indebtedness to said Comptoir when becoming or made due, or to keep up the margin of collateral securities above provided for, then and in either event said Comptoir may immediately, without advertisement and without notice to the undersigned, sell any of the securities held by them as against any or all of the liabilities of the undersigned, at private sale or broker's board, or otherwise, and apply the proceeds of such sale as far as needed toward the payment of any or all such liabilities, together with interest and expenses of sale, holding the undersigned responsible for any deficiency remaining unpaid after such application.

It is further agreed that these presents constitute a continuing agreement applying to any and all future, as well as to existing transactions between the undersigned and said Comptoir.

.....

Dated ..... the ..... day of ..... 190..

60 "EXHIBIT F."

Know all men by these presents, that the undersigned, in consideration of the fact that they may sell to the Comptoir National d'Escompte de Paris, or their agents, from time to time, bills of exchange, drawn in, but payable out, of the United States, against shipments of merchandise from various ports in the United States to various ports abroad against bills of lading to be delivered therewith, and for other valuable considerations, hereby agree with the Comptoir National d'Escompte de Paris, and with their agents and the successors of either or both, that said Comptoir National d'Escompte de Paris in addition to all rights created by the circumstances shall have the following rights, and that the undersigned will do and perform each and all the following matters and things:

All bills of lading delivered to the Comptoir National d'Escompte de Paris or to their agents, shall be held by them as security for the acceptance and /or payment as the case may be, at their discretion, of any and all bills of exchange purchased by the Comptoir National d'Escompte de Paris or their agents, and the said Comptoir National d'Escompte de Paris shall have a lien upon all property covered by or described in said bills of lading as security for the acceptance and /or payment of each and all of said bills of exchange.

Whenever the Comptoir National d'Escompte de Paris or their agents shall have purchased such bills of exchange from the undersigned, all bills of lading applicable thereto shall be lodged with the Comptoir National d'Escompte de Paris as collateral security for acceptance and /or payment of the said bills of exchange as aforesaid.

If at any time in the discretion either of the Comptoir National d'Escompte de Paris, or their correspondents, it shall be deemed advisable, for the purpose of securing the acceptance and /or payment of aforesaid bills of exchange, either to surrender the bills of lading against broker's engagements, or to place the merchandise represented by said bills of lading in the hands of their brokers for sale at their discretion, they shall be at liberty to do so, and to charge all expenses, including commissions for sale and guaranty, and apply the proceeds in or towards the payment of the bills of exchange for account of whom it may concern.

In case the proceeds arising from the sale of the merchandise represented by the said bills of lading or any of them, shall at any time be less than the amount of the bills of exchange purchased by said Comptoir National d'Escompte de Paris or their agents, and

drawn against said merchandise, and the costs, expenses and commissions of said sale, legal charges and all other disbursements, the undersigned will after such sale, forthwith pay the amount of any such deficiency to Comptoir National d'Escompte de Paris or their agents, United States gold coin of the present standard of weight and fineness, or its equivalent.

If any of the documents aforesaid be surrendered against payment before maturity of any of the bills drawn against them, a rebate shall be allowed to the drawee, at the rate of one half of one per cent. per annum above the then advertised rate for short deposits of the leading joint stock banks in London or at the official bank rate in Paris or at the customary rate for such rebate in other European cities.

It is further agreed that these presents constitute a continuing agreement applying to all future, as well as to existing transactions, between the undersigned and the Comptoir National d'Escompte de Paris and their agents and correspondents elsewhere.

.....

Dated ..... the ..... day of ..... 189..

61 *Document Marked Exhibit "G," Being Blank Form Used by Commercial National Bank of the City of New Orleans in Conduct of Business, etc.*

Offered by Defendants and Filed January 13, 1902.

No. ..... NEW ORLEANS, ..., 190–.

Received from the Commercial National Bank, of New Orleans, ... dollars, on account of ..... exchange on ..... arising from shipment, and from measures taken preparatory to the shipment of ..... per ..... which is covered by policies of insurance against fire and marine risks, and which policies are hereby bound and pledged specially to ..... for the fulfillment of the contract to furnish the exchange agreed to, and for the money here advanced, in case of the non-completion of the contract from any cause.

$..... .....

62 *Order of Reference to W. W. Howe, Special Master.*

Entered in the Minutes and Filed January 13/1902.

Circuit Court of the United States, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

In equity.

This cause come on this day to be heard upon the pleadings and proofs.

Present, Harry H. Hall, Esq. for the complainant; H. G. Dupre, ass't city attorney, for the treasurer of the city of New Orleans; E. K. Skinner, Esq., for the board of assessors for the parish of Orleans; and F. C. Zacharie, Esq., for the tax collector of the 1st district of New Orleans, and was partially heard by the court.

Whereupon the court of its own motion, ordered that said cause be referred to W. W. Howe, Esquire, as special master, with full power to examine the same, hear evidence and testimony and with directions to report upon all the facts and law in the case and to speed the cause.

(Signed) CHARLES PARLANGE,
U. S. Judge.

New Orleans, January 13th 1902.

63 *Report of Special Master.*

Filed February 14th, 1902.

United States Circuit Court, Eastern District of Louisiana, at New Orleans.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS. } No. 12949. In Equity.

To the judges of the circuit court:

By a decretal order entered in this cause January 13, 1902, it appears that the case came on to be heard upon the pleadings and proofs, and was partially heard by the court, whereupon, the court, of its own motion, ordered that said cause be referred to the undersigned, as special master, giving full power to examine the same, hear evidence and testimony, and with directions to report upon all the facts and law in the case, and to speed the cause.

In pursuance of this order, the undersigned, as special master, has been attended by counsel for the complainant and for the de-

fendants, and has examined the evidence taken in the cause, as submitted by counsel, and has considered the facts and the law, and begs leave to report as follows:

The Facts.

The following facts appear, either by the admissions of the answer or by the proofs in the cause:

The complainant is a corporation created by and existing under the laws of the Republic of France and having its principal office for the transaction of business, and its domicile, in the city of Paris, France.

Since the year 1895, it has had an agency or office in the
64 city of New Orleans for the purpose of selling exchange; and has advanced money upon the agricultural products of this part of the country; such agricultural products being either on their way to foreign countries or stored in warehouse in New Orleans; and the money thus advanced was obtained by drawing foreign exchange on Europe. There has never been any fixed capital of the complainant in Louisiana, but under the operations of the agent in New Orleans, it has had on an average $20,000 deposited in the local banks of this city.

The complainant has paid a license tax to the State of Louisiana and the city of New Orleans, as demanded, under act 127 of 1898, being an annual tax on business done in New Orleans, the amount of which annual tax ranges from $2500 to $3500.

It has also paid regularly or offered to pay an annual tax upon its average money in bank or capital used in New Orleans, on an assessment of $20,000, as well as upon its office furniture.

The assessment complained of in the case at the bar is different from and in addition to the foregoing. It is made under a heading of "Money loaned on interest, all credits, and all bills receivable for money loaned on interest or advanced for goods sold, $175,000." The contention of the complainant is that this assessment should be entirely cancelled by reason of the fact that all the credits and bills receivable belonging to the complainant were only assessable and taxable at its domicile in the city of Paris, France, where all of its credits and bills receivable were held and situated and not in the city of New Orleans.

(Bill of complaint, par. 6.)

In order to come down to the exact question of fact in dispute, it may be stated that the proofs show the following state of things:

The testimony of Albert Breton was taken partly by commission and partly by personal examination of the witness in New Orleans. It appears that he was the local agent of the complainant at the time inquired of; that the business of the complainant was as above stated; and that the money used in such business was ob-
65 tained by drawing foreign exchange on Europe; that the complainant has never had any fixed capital in Louisiana,

but had an average deposit in the local banks of $20,000, which presumably was used and turned over in the business here, and the tax on which is not in dispute, having been paid, or agreed to be paid, as above stated; that the license tax upon the business of the company has been duly paid for the years 1899, 1900, and 1901, in amounts ranging for each year from $2500 to $3500; and that legal steps had been taken tending to the cancellation of the assessment complained of in this cause, and the application of the complainant was not granted. As for the business involved in this suit and constituting the $175,000 of disputed assessment, the witness states as follows:

"Q. During the years 1900 and 1901, state what credits or bills receivable for money loaned on interest or advanced, or for goods sold, the Comptoir National had or retained in the city of New Orleans or the State of Louisiana. State fully whether or not it received for monies loaned or advanced any promissory notes or bills receivable during said years."

"A. We did not receive promissory notes or bills receivable, because our clients preferred and insisted to be simply overdrawn, so as to be able to reimburse us the whole or part of our advances at their convenience at any date they might choose."

"Q. If in reply to interrogatory No. 12 (the foregoing), you state that the agency of the Comptoir National in the city of New Orleans did not during the years 1900 and 1901 take any bills receivable or promissory notes for money loaned or advanced by it on bills of lading, goods in warehouse, or otherwise, state fully what acknowledgement or evidence of said indebtedness was taken by said Comptoir National D'Escompte de Paris, through you, as its agent in the city of New Orleans, or through anyone else representing it?"

"A. Our clients used to draw checks on the Comptoir National, giving at the same time sufficient collateral to cover their
66 drawings. There was no one representing the Comptoir National in 1900 or 1901 but myself in New Orleans, and therefore, all business was done through me."

The witness further states that "the business is, and always has been, that of a general foreign exchange business:" "the object was to pay in advance the amount of foreign exchange bought by us, as drafts and bills of lading relating to same can not be delivered before the shipment of the goods to Europe; the object was also to comply with the request of the local merchants who wanted to facilitate and develop the handling through New Orleans of products brought in the interior of the Southern States. Another object was also the employment of funds arising from exchange on Europe sold in advance at high rates in view of remitting the same funds back to Europe at lower rates."

The witness further states, in answer to the 16th interrogatory under the commission: "The profits from foreign exchange form the difference between the net rate of selling and the net rate at which we can rebuy to cover such sales. The foreign exchange business is a very erratic one as far as profits are concerned, but I

may state that the difference between the selling and purchasing prices ranges from fifty cents (50c.) to one dollar and a half ($1.50) per thousand dollars ($1,000.00). As far as profit or interest is concerned, it depends entirely on the rates of interest ruling in Europe and the United States. Sometimes the rate of interest in the United States has been up to four per cent. (4%) above the European rate, but sometimes it has also happened that money was cheaper in the States than in Europe. In the latter case, the loss of interest is compensated by the profit in a foreign exchange deal. In the above statement, I have not taken into consideration the exceptional rates ruling occasionally in the New York stock market."

In answer to the seventeenth and last direct interrogatory of the commission, he says as follows: "As already stated, our clients keep simply overdrawn accounts, and we give them the facility to
67 make the reimbursement, total or partial, at their own convenience and whenever they please. As far as the credits are concerned, our credits are issued and drawn on Paris and London and are to be reimbursed in those places at their respective due dates.

In answer to the first cross-interrogatory, he states as follows: "The character of the business transacted by the agency of the Comptoir National in New Orleans is that stated in act 127 of 1898 of the Louisiana legislature: The dealing in foreign exchange carrying the advance of money, as already stated in my previous answers. When a client needs money, he draws a cheque on and hands us at the same time sufficient security to cover the amount drawn. The money thus obtained by him may be reimbursed at any time, either with foreign exchange or by cash. To get the money advanced, we draw on Paris, London or Berlin, as the case may be. When the money is reimbursed, we remit it back to Europe through a foreign exchange transaction. When a client wants to use a credit for a fixed period of time, we open for his account a credit to be utilized by drawing on Paris or London, and the amounts drawn against such credits are to be remitted to Paris or London before the maturity of the drafts accepted by our correspondents. I have here no copies of blanks at my disposal."

To the second cross-interrogatory, he states as follows: "As already stated, a client draws cheques on us which are kept by the accountant as cash vouchers. When they use foreign credit, drafts are issued on our foreign correspondents and such drafts are sold to the New York banks and remitted by these banks to their agents in Europe. These drafts never come back to America."

To the third cross-interrogatory, he states as follows: "The collateral referred to is kept in trust in New Orleans by the accountant both for the account of the client and the Comptoir National. As there is frequent necessity of handling and exchanging the documents composing the collateral, it is quite impossible to send it out of the State of Louisiana."

68 To the fourth cross-interrogatory, he states as follows: "There was a change in the conduct of our business in 1900

and 1901, as mentioned in the cross-interrogatory, but the reason of that change was due to the complaints we received from clients, who wanted us to do as other local institutions were doing: that is to say, to allow them to be simply over-drawn instead of requiring notes to be signed by them. The average of our cash balances with the local banks during 1900 and 1901 reaches an aggregate amount of twenty thousand dollars ($20,000.00) more or less. I cannot remember, and therefore, I cannot state fully how much money we had each month in the New Orleans banks. Most of our advances are against foreign exchange dealings, and they last as a rule between five and thirty days. There is a continual renewal of such dealings and advances, which taken together during the year will give rather a large amount, which however cannot be considered as a fixed loan. It is quite impossible for me to say, and I cannot make an exact statement here in Paris of the total amount of our advances during the years 1900 and 1901."

To the fifth and last cross-interrogatory, he states as follows: "The money needed by the agency of the Comptoir National in New Orleans comes from foreign exchange, drawn on London, Paris, Berlin &c. wherever the rates are the most advantageous, and all money collected in New Orleans is remitted in the same way to Europe in a reimbursement of each previous drawing."

On the return of the witness Breton to New Orleans, he was further cross-examined as to the details of complainant's business, but it does not seem that anything was elicited that could especially modify the foregoing. It was admitted by counsel that at the time this testimony was taken, the character and method of conducting the business had not been changed since April, 1901, when Breton left the office.

Testimony was taken by the defendants of two witnesses connected with New Orleans banks doing an exchange business.

69 Their practice, when carrying on a business similar to that of the complainant, is to take a receipt for the money advanced, and not a note. What the practice is of other banks or agencies does not appear.

To sum up the facts: It is found that the complainant has paid its annual license tax on its exchange business, as provided by law, and has paid, or offered to pay, its annual tax on the average amount of $20,000 of money on deposit in Louisiana; and that the assessment, complained of, of $175,000 for the year 1901, is on the credits accruing to it from the advances made by it in New Orleans, through its agents here, on bills of lading and similar documents by way of collateral. These credits were either in the form of credits on Paris or London, giving the right to the Louisiana debtors to draw on the complainant in Paris or London, or they were transactions at short time by which the debtors were overdrawn on the books. In both cases, they amounted to overdrafts secured by collateral. In the previous year, which is not now in question, the complainant took non-negotiable notes to represent these credits, and these were considered in the case in the 52 Annual which will be

hereafter referred to again; but in the instant case, for the year 1901, the question is of these overdrafts.

The Law.

In the opinion of the undersigned, the law of this case may be summarized as follows:

The protection of the Government may be either to the rights of persons or to rights in property, and taxes may consequently be imposed when either person or property is within the jurisdiction. But a personal tax can not be assessed against a non-resident, nor can the property of a non-resident be taxed unless it has an
70 actual situs within the State, so as to be under the protection of its laws. The mere right of a foreign creditor to receive from his debtor within the State the payment of his demand, can not be subjected to taxation within the State. It is a right that is personal to the creditor where he resides, and the residence or place of business of his debtor is immaterial. The power of taxation is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, their property and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. Corporations may be taxed like natural persons on their property or business; but debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor can not be taxed because he is not within the jurisdiction, and the debts can not be taxed in the debtors' hands, because they are not the property of the debtors in any sense. They are the obligations of the debtors, and only possess value in the hands of the creditors. With them, they are property, but to call them property in the hands of the debtors is simply to misuse terms.

Cooley on Taxation, pp. 14–16; State tax on foreign-held bonds, 15 Wallace, 300, 319.

The foregoing general considerations are sometimes pressed by the rule *mobilia sequuntur personam;* and although this rule is, in a certain sense, a fiction of law, yet it is none the less a rule that may be usefully observed and considered in determining the questions at issue.

The chief point to be determined is the situs of the property which has been assessed in this case in the sum of $175,000, and the main question is, what was the *situs* of that property at the time of the assessment? Was it in Paris or in New Orleans? Was it tangible personal property which had its physical situs in Louisiana, or was it of that intangible character that would cause it, in view of the above doctrines, to have its situs in France?

71 In the case of Meyer against The Sheriff, 41 An., 645, 646, the tax collector contended that under the revenue act of Louisiana, movable property should be assessed in the parish where it is located. The supreme court of Louisiana declared that this

provision applies to tangible movables, but not to incorporeal rights generally, which follow the person of the owner and are not susceptible of physical location, and added, "It is well settled that the situs of a debt as property is at the domicile of the creditor." In that case, the movable sought to be assessed in the parish of Union was a judgment in the district court of that parish in favor of V. & A. Meyer & Co, residents of New Orleans.

In the case of the Barber Asphalt Paving Co. *v.* City of New Orleans, 41 An., 1015, it was declared that "debts and other incorporeal rights, when treated as property for the purpose of taxation, can be assessed only at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. The principle applies to corporations as well as to natural persons. Hence, debts due to a foreign corporation by residents of this State can not be taxed in this State."

The decision in that case seems to have been very broad. It is contended by the city attorney that by the article 236 of the constitution of 1879, it was provided that no foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the State upon whom process may be served; and that the Barber Asphalt Co., having complied with this provision, had assumed the duties and obligations of a citizen of the State akin to those of a natural person; but the court declared that those provisions and facts did not affect the question, and that the domicile of the Asphalt Co. was still foreign in its character, being the State where it was incorporated, and that it was at that domicile that its obligations for, and its liability to, taxation for debts or other incorporeal rights which it owns must be tested and settled; citing R. R. Co. *v.* Koontz, 104 U. S., p. 11.

72 In the case of Liverpool &c. Ins Co. *v.* Board of Assessors, 44 An. 760, the question concerned two assessments, one on money in actual possession in New Orleans, and the other on what, as a matter of fact, consisted of *credits for premiums due from various insured persons.* As to the former object of taxation, the assessment was maintained on the ground that the $10,000 of money in possession of the insurance company in New Orleans was property within the State and subject to taxation, being visible and tangible and expressly made taxable by statute and taxable where actually situated, in the city of New Orleans; but as to the latter subject of assessment, namely, the premiums due, the court declared that a debt to a non-resident of a State is not liable to be taxed by a State in which he does not reside; that such credits are not within the State's jurisdiction, and that they are of no value to the debtor. The court conceded that the statute No. 106 of 1890, under which these credits were assessed, did by its language authorize the taxation of credits held by non-residents; but the court further declared that this statute must be applied in so far as it relates to tangible movables belonging to non-residents, and as to them, the general rule recognized by the comity of States, *mobilia personam sequi-tur* must

yield. But as to the movables that were intangible, like the credits in question in that cause, "the want of jurisdiction and power would render it useless to maintain the general rule applying to tangible movables." And so the court declared that such credits or debts can not be assessed against non-residents.

In the case of Railey *v.* Board of Assessors, 44 An. 765, the same question came up in regard to an assessment on credits of non-resident insurance companies, and the court finally declared, p. 770, as follows:

"These credits consist of nothing but debts due the companies for uncollected premiums. The simple question presented to us was, whether the State possessed jurisdictional power to tax such mere debts due to foreign creditors.

"There is no doubt of the legislative power to modify the
73 rule of comity, *mobilia personam sequuntur*, in many respects. Movables having an actual situs in the State may be taxed there, though the owner be domiciled elsewhere. Even debts may assume such *concrete form* in the evidences thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities, and possibly of negotiable promissory notes, bills of exchange, or bonds. But as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any *situs* distinct from the domicile of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned. As said by the Supreme Court of the United States: 'To call debts property of the debtor is simply to misuse terms. All the property there can be in the nature of things, in debts, belongs to the creditors to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due.' State tax on foreign-held bonds, 15 Wall., 300. A State has no more power to subject such debts due to foreign creditors to taxation than it would have to tax their corporeal movables situated at their foreign domicile."

In Clason against The City, 46, An. p. 1, the plaintiff was a commercial firm domiciled in Manchester, England, with an office in New Orleans. Its business in Louisiana was confined to making through a clerk or agent stationed in New Orleans, purchase of cotton for shipment to the house in Europe. The agent of the firm raised money to buy and pay for the cotton through exchange, drawing on the house in Manchester, getting money for the bills so drawn and depositing it in New Orleans banks. In delivering the opinion of the court, the chief justice said,—"The question submitted to us is, whether these amounts standing in bank to the credit of the plaintiffs are subject to taxation."

The lower court held that they were not.

After discussing the question with references to some of the
74 decisions above cited, the court said that the fact that the plaintiffs had had a resident clerk in New Orleans, and an office there, and paid a license there, was unimportant. For the

purpose of a determination of the issue involved, the court would deal with the plaintiffs as non-residents, and in so dealing with them, was of opinion that the judgment of the lower court was correct; that no distinction could be made between the debt due to the plaintiffs by a bank, as arising from a deposit to the credit of the firm in money, and that due to it from any other cause; that the relations between the plaintiffs and defendant (meaning the bank) were those of creditor and debtor; that the monies were not specially deposited to be identically restored, but went into the mass of the bank's money with the understanding that they might be used and should be the basis of items in a debit and credit account; and the judgment of the lower court was, therefore, affirmed.

In the case of The State *ex rel.* Ins. Co. *v.* Board of Assessors, 47 An. 1544, the relator was a local insurance company of Louisiana, having an office in New Orleans and owning certain Georgia State bonds, which, however, were deposited with the treasurer of Georgia. The insurance company was contending that these bonds could not be taxed in the city of New Orleans, the domicile of the company, but the court held that it had never been decided that tangible personal property could not be assessed at the owner's domicile, notwithstanding its actual situs was abroad in some other State or country; and it was, therefore, decided that such bonds might be assessed and taxed in New Orleans.

In the case of The Liverpool &c. Ins. Co. *v.* Board of Assessors 51 An. 1028, the insurance company had been assessed upon debts or credits that were due from premiums. The lower court had decided such an assessment to be invalid. The supreme court, in affirming the judgment, said,—"We understand that the issues now relate to the assessment of debts that were due for premiums, and that the other items of property assessed do not give rise
75 to any question for our decision."

The court then reviewed the authorities at considerable length and affirmed the judgment, holding that the credits due to a foreign corporation were not taxable. It seems to have been urged that the following decisions of the Supreme Court of the United States had modified the rule, namely, Home Silver Mining Co. *v.* New York, 143 U. S. 315; Adams Express Co. *v.* Ohio, 165 U. S. 228; Henderson &c. *v.* Ky., 166 U. S. 150; but the supreme court of Louisiana held, on the contrary, that such decisions rather sustained its views.

Other decisions may be referred to in which certain assessments have been sustained by the supreme court of Louisiana. In Bluefields Banana Co. *v.* Assessors, 49 An. 43, it was held that under the circumstances of that case, the cash derived in New Orleans from the sales made by the company here and deposited in bank might be assessed.

In Parker *v.* Strauss & Co., 49 An. 1173, the defendants, being a foreign firm, claimed exemption from taxation upon certain deposits in bank in New Orleans derived from negotiation of bills of exchange. The cases of Liverpool &c. Ins. Co., *v.* Board of Assessors

44 An. 760, and Clason & Co. *v.* New Orleans, 46 An. 1, were referred to. The court recognized the exemption from taxation in New Orleans of debts due foreign corporations, but declared that the decisions recognized the validity of assessment on cash of such companies necessary to be kept here for business purposes. The case of the banana Co., quoted above was recognized and applied. The court said, "The revenue act, in entire accordance with the conceded extent of the taxing power, taxes the movable property of the foreigner. We can not hold that cash thus liable to taxation is exempted because, for convenience, it is deposited in bank and checked on by the owner. It would be a strain to apply to the deposited cash the exemption from taxation accorded to debts in their ordinary significance, due to the foreign creditor." The validity of the assessment was, therefore, maintained.

76 In New Orleans *v.* Stempel, 175 U. S. 309, the circuit court of the United States for the eastern district of Louisiana had denied the validity of the assessment on "money in possession on deposit or in hand, money loaned on interest, all credits and all bills receivable, for money loaned or advanced, or for goods sold; and all credits of any and every description." The assessment had been made under the act of 1890, No. 106, which declared that "all rights, credits, bonds, and securities of all kinds, promissory notes, open accounts, and other obligations, and all cash" should be subject to taxation. The seventh section of the act, page 124, after declaring "that it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation," closes with this provision:

"And this shall apply with equal force to any person or persons, representing in this State business interests, that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations, or credits arising from the business domiciled in this State, are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative."

The Supreme Court of the United States in its decision reviewed the following cases: The Liverpool &c. Ins. Co. *v.* Board of Assessors, 44 An. 760, referring back to 41 An. 645 and 1015; Railey *v.* Board of Assessors, 44 An. 765; Clason *v.* New Orleans, 46 An. 1; Banana Co. *v.* Assessors, 49 An. 43; Parker *v.* Strauss, 49 An. 1173; Liverpool &c. Ins. Co. *v.* Board of Assessors, 51 An. 1028. The court notes the qualification recognized in the cases of the Banana Co. and Strauss & Co., and at page 316, declared as follows, with reference to the specific assessments complained of by the appellee, Stempel.

"From this review of the decisions of the supreme court of the State, it is obvious that monies, such as those referred to,
77 collected as interest and principal of notes, mortgages and other securities kept within the State and deposited in one of the banks of the State for the use or reinvestment, are taxable under

the act of 1890. They are property arising from business done in the State; they were tangible property when received by the agent of the plaintiffs, and as such subject to taxation, and their taxability was not, as the court holds, lost by their mere deposit in a bank. It is true that when deposited, the monies became the property of the bank, and for most purposes the relation of debtor and creditor arose between the bank and the depositor; yet as evidently the monies were to be kept in the State for reinvestment or other use, they remained still subject to taxation, according to the decision in 49 La. Ann. 43. With regard to the notes and mortgages, it may be conceded that there is no express decision of the Supreme Court to the effect that they were taxable under the law of 1890, yet the reasoning of that court in several cases, and its declarations, although perhaps only dicta, show that clearly in its judgment they had a local situs within the State, and were by the statute of 1890 subject to taxation.

"When the question is whether property is exempt from taxation, and that exemption depends alone on a true construction of a statute of the State, the Federal courts should be slow to declare an exemption in advance of any decision by the courts of the State. The rule in such a case is that the Federal courts follow the construction placed upon the statute by the State courts, and in advance of such construction they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact. In other words, they should not release any property within the State from its liability to State taxation unless it is obvious that the statutes of the State warrant such exemption, or unless the mandates of the Federal Constitution compel it.

"If we look to the decisions of other States, we find the frequent ruling that when an indebtedness has taken a concrete form
78 and become evidenced by note, bill, mortgage or other written instrument, and that written instrument evidencing the indebtedness is left within the State in the hands of an agent of the non-resident owner, to be by him used for the purposes of collection and deposit or re-investment within the State, its taxable situs is in the State. See Catlin *v.* Hull, 21 Vt. 152."

In Bristol *v.* Washington County, 177 U. S., p. 133, the Supreme Court of the United States held that personal property of a citizen of and resident in one State, invested in bonds and mortgages of another State, is subject to taxation in the latter State.

In Union, etc., Co. *v.* Lynch, 177 U. S., p. 149, it was held that cars of the Union Refrigerator Trans. Co, a corporation of Kentucky, engaged in furnishing to shippers refrigerator cars for the transportation of perishable freight and which were employed in the State of Utah for that purpose, were subject to taxation by that State. The court cited the following decisions:

American, etc., Co. *v.* Hall, 174 U. S., 70; Pullman Co. *v.* Pennsylvania, 131 U. S., 530; Adams Express Co. *v.* Ohio, 165 U. S., 194; and Adams Express Co. *v.* Ohio, 166 U. S., 185; and quoted from the first of these cases the following language:

It having been settled, as we have seen, that where a corporation of one State brings into another to use and employ a portion of its movable personal property, it is legitimate for the latter to impose upon said property thus used and employ- its fair share of the burdens of taxation imposed upon similar property used by its own citizens,—we think that such a tax may be properly assessed and collected in cases like the present, where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing according to the exigencies of the business, and that the tax may be fixed by an appraisement of the value of the property so habitually used and employed."

79 In the case of the complainant at the bar against The Board of Assessors, 52 An., 1319, the question came up in another form. The Comptoir claimed that non-negotiable notes held by it in New Orleans, resulting from its business here were to be considered as being constructively in France, the domicile of the plaintiff company; and that a promissory note follows as much the domicile of the creditor as does an open account.

The court declined to accept this view; referred to the decision above cited in the case of New Orleans *vs.* Stemple; and stated that a non-negotiable note is certainly sufficiently "concrete in form" to be made an object of taxation. The court said that the facts of the case brought it squarely under the decisions in the case of the Banana Co. and of Strauss & Co., above referred to. It also distinguished the case from that of Clason & Co., above cited, using the following language:

"The facts of the case are entirely different. Here the foreign corporation is engaged in a regular business, investing and reinvesting the monies through an agent in this State. In the other case, Clason & Co. were merely the agents of an English firm for the purchase of cotton to be shipped by them at once to the firm in Europe. Instead of paying for this cotton by means of bills of exchange transferred to the vendors, which they themselves would have cashed, the agents for convenience, had the bills cashed, deposited the amount in bank, and drew against the funds in favor of the sellers."

A review of the facts of the case at the bar and of the decisions above cited, suggests that the main question of law in this case is not entirely free from difficulty. There is a border land in such matters, and it is not always easy to say on which side of the line the objects of dispute in this case should be located.

The revenue act of Louisiana No. 170 of 1898 begins by the statement that the assessment and taxation it contemplates is

80 to be upon "*all the property situated in the State of Louisiana.*"

The legislature seems to concede that property not situated in the State of Louisiana is not to be assessed and taxed under her authority. We are thus brought face to face with the question, Were these credits of $175,000 in the year 1901 situated in the State of Louisiana? Were they in the category of credits like the amounts due for premiums in the cases of the Liverpool, etc., Ins. Co.; or, on the other hand, were they governed by the rule laid down as to the non-negotiable promissory notes in the case of the

Comptoir decided in the 52 An., and the objects assessed in the case of Stempel.

The point urged by the counsel of the city and State that the change of methods in the complainant's business as stated above in the recital of facts, was an evasion of the rule laid down in its case in the 52 An., does not seem to be valid, and does not seem to be supported by the case of Mitchell, 91 U. S., 206. The complainant at the bar has paid a license tax of an undisputed amount on all its business operations in New Orleans for the year 1901; and has paid or is ready to pay, a tax on money here in possession to an undisputed amount. The question to be solved without prepossession and in the dry light of legal logic, concerns alone the situs of the credits above mentioned.

Did they possess the concrete form mentioned in the 52nd. Annual, or were they, on the other hand, so intangible and incorporeal as to have their situs at the domicile of the complainant in Paris?

It seems to the undersigned that these credits were, in the language of the common law, mere choses in action, and therefore, merely rights to recover money. A mere right to recover money is intangible and incorporeal, although, the money itself, when eventually recovered, may be something corporeal.

Or if we use the terminology of the civil law, which might properly be used in this case, these credits were *res incorporales*.

To use the language of Gaius, as cited in the Digest of
81 Justinian, Lib. I, title 8, par. 1, sec. 1,—Incorporeal things are those which cannot be touched, being those that consist in a right, *in jure consistunt;* for example, obligations in whatever manner they are contracted; and the right of obligation itself is no less incorporeal, as he points out, although it may refer to something corporeal.

The Civil Code of Louisiana, article 460, following the same ideas, states that incorporeal things are such as are not manifest to the senses and which are conceived only by the understanding; such as the rights of inheritance, servitudes, and obligations.

The credits that have been assessed in the instant case appear to be of this character. In the termonology of the civil law, they are obligations or legal ties that bind persons in New Orleans to a person in France, and are in no way apparent to the physical senses. As the Louisiana Code declares, they are conceived only by the understanding. They have no more concrete existence than a right to a specific performance of a contract to convey land. They are not the subject of physical delivery or of asportation. They do not differ in any legal aspect from the foreign insurance company for premiums as ruled upon in the cases above cited.

It follows that they have their situs in France, and not in Louisiana; and that the complainant at the bar is entitled to the relief for which it prays.

Respectfully submitted.

(Signed) W. W. HOWE,
Special Master.

Feb'y 12, 1902.

82 *Exceptions to Master's Report.*

Filed by Defendants March 6th, 1902.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12949.

Now come The Board of Assessors for the Parish of Orleans, The City of New Orleans, George B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector, first district parish of Orleans, respondents in the above entitled cause, and beg leave to tender the following exceptions to the report of Hon. W. W. Howe, special master, filed herein on February 14th, 1902.—

1st. These respondents except to said report, in that it finds that said complainant is entitled to have the relief for which it prays.

2nd. These respondents except to said report, in that it finds as a matter of fact and of law that complainant has no credits or money loaned on interest within this State, subject to taxation.

3rd. Responde-ts except to said report, in that it finds as a matter of law that complainant should have within this State written evidences of amounts due it as a result of business done within this State, to bring it within the jurisdiction of the taxing authorities of this State.

4th. Respondents except to said report, in that it finds as a matter of fact that complainant has within this State no such written evidences of amounts due it for business done within this State.

5th. Respondents except to said report, in that it finds as a matter of law that a non-resident can carry on business within this
83 State without paying a corresponding tax with that exacted of the citizens of the State engaged in a similar business.

6th. Respondents except to said report, in that it finds that the change in 1900 of complainant's method of doing business, as compared with the method in vogue in 1899 and previous years was not a shift to avoid taxation and was not made so as to avoid the decision of the honorable, the supreme court of the State of Louisiana in the case of Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors, reported in 52 La. Ann., page —.

Wherefore, respondents pray that the exceptions hereinabove set forth to said master's report, be maintained, that said master's report be rejected, and that complainant's bill be dismissed at its costs.

(Signed) SAM'L L. GILMORE,
City Attorney,

(Signed) H. G. DUPRE.
Ass't City Attorney,
Solicitors for the City of New Orleans and Geo. B. Penrose, Treasurer of the City of New Orleans.

(Signed) E. K. SKINNER,
Solicitor for Board of Assessors.

(Signed) F. C. ZACHARIE,
Solicitor for State Tax Collector.

84 *Motion to Set for Argument.*

Filed by Complainant March 12th, 1902.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
THE BOARD OF ASSESSORS ET AL. } No. 12949.

On motion of Harry H. Hall, solicitor for complainant, and on suggesting that Judge W. W. Howe to whom this case was referred as a special master, with instructions to report upon the law and the facts has filed this report and that exceptions thereto have been filed by respondents;

It is ordered that said exceptions be set for argument for Saturday, March 22nd, at 11 a. m.

N. O. M'ch 11th, 1902.

85 *Hearing and Submission of Exceptions.*

Extract from the Minutes.

NEW ORLEANS, SATURDAY, *March 22nd*, 1902.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS. } No. 12949.

This cause came on this day to be heard upon exceptions filed by the defendants to the report of W. W. Howe, special master herein;

Present: H. Garland Dupre, for Geo. B. Penrose city treasurer of New Orleans, La E. K. Skinner for the board of assessors. F. C. Zacharie, for State tax collector. Harry H. Hall, for the complainant in suit,

and was argued by counsel and submitted when the court took time to consider.

Order Overruling Exceptions and Confirming Report.

Extract from the Minutes.

NEW ORLEANS, TUESDAY, *April 1st*, 1902.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS. } No. 12949.

This cause came — to be heard at a former day upon exceptions filed by the defendants to the report of William W. Howe, special master

herein, and after arguments of counsel for the parties was submitted;

Whereupon and on consideration thereof it is ordered, adjudged, and decreed that the said exceptions be overruled and the master's report confirmed.

86 *Final Decree.*

Filed April 9, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET AL. } No. 12949.

Decree.

This case having been argued before the court on exceptions to the master's report, by Messrs. H. G. Dupre, solicitor for the City of New Orleans, and E. K. Skinner and F. C. Zacharie, solicitors for the Board of Assessors and the State Tax Collector and an order having been herein entered after due hearing, overruling the exceptions to the report of Mr. W. W. Howe, master, and confirming the said report,

It is now ordered adjudged and decreed that there be judgment herein in favor of complainant and against the City of New Orleans, its officers, agents and attorneys and representatives, Geo. B. Penrose, treasurer of the city of New Orleans, and against John Fitzpatrick, State tax collector of the first district of the city of New Orleans, enjoining forbidding and prohibiting them or each of them in any way or by any proceedings whatever from enforcing or attempting to enforce the collection of taxes of the city of New Orleans and the State of Louisiana based upon the assessment made by the board of assessors for the parish of Orleans, for the year 1901 against the Comptoir National D'Escompte de Paris, to-wit:

"*Money loaned on interest, all credits and all bills receivable for money loaned on interest or advanced or for goods sold—$175.000,*" and from seizing, advertising, selling or attempting to sell any property whatever belonging to the said Comptoir National D'Escompte de Paris to pay and satisfy any demand or claim whatever for taxes levied upon the aforesaid assessment against the property of your orator.

87 It is further ordered and decreed that the said assessment and all municipal and State taxes thereon levied be and they hereby are decreed to be illegal, void and of no effect, and it is ordered that the said assessment be cancelled from the assessment rolls for the year 1901.

It is further ordered, adjudged and decreed that the preliminary injunction herein issued be made perpetual and that the defendants herein pay all costs of this proceeding including the sum of

three hundred dollars now allowed W. W. Howe, Esq., special master as a fee for his services and hereby taxed as costs in this cause.
N. O., April 9/1902.
(Signed) CHARLES PARLANGE,
U. S. Judge.

O. K. as to form.
E. K. SKINNER.
F. C. ZACHARIE,
Per E. K. SKINNER.
H. G. DUPRE,
Ass't City Att'y.

88 *Petition and Order for Appeal.*

Filed Oct. 17, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS. } No. 12949.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

The petition of The State Board of Assessors for the Parish of Orleans, of The City of New Orleans, of George B. Penrose, treasurer of the city of New Orleans, and of John Fitzpatrick, State tax collector for the first municipal district, parish of Orleans, all made defendants herein, respectfully represent:

That the said defendant petitioners are aggrieved by the decree of this honorable court herein rendered and signed on the 9th day of April, 1902; that there is error to the prejudice of said defendants in said decree, by which they will be irreparably injured.

Wherefore petitioners pray that they be allowed an appeal from said decree returnable to the Supreme Court of the United States, according to law, upon petitioners giving bond in an amount to be fixed by the court, and that the Comptoir Nationale D'Escompte de Paris through its proper officer, be cited to answer this appeal, and petitioners pray for all special and general relief.

(Signed) S. L. GILMORE, *City Att'y,*
H. G. DUPRE, *Ass't City Att'y,*
Solicitors for the City of New Orleans and Geo. B. Penrose, Treasurer of City of New Orleans.
(S'g'd) F. C. ZACHARIE,
Solicitor for John Fitzpatrick, State Tax Col'r.
(S'g'd) E. K. SKINNER,
Solicitor for Board of Assessors.

Order.

Let an appeal be granted petitioners as prayed for, returnable to the Supreme Court of the United States at the city of Washington within 30 days from the date hereof, upon petitioners giving bond with good and sufficient security in the sum of $400.00 conditioned as the law directs.

(Signed) CHARLES PARLANGE,
U. S. Judge.

New Orleans, October 16th, 1902.

89 *Assignment of Errors.*

Filed October 16, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12949.

In equity, 5th circuit.

Now into this honorable court comes The City of New Orleans, Board of State Assessors, for the Parish of Orleans, John Fitzpatrick, State tax collector for the first municipal district of the city of New Orleans, and George B. Penrose of the city of New Orleans, defendants and respondents herein, and assign the following errors in the decree of this honorable court of date April 9th, 1902.

(1.)

The court erred in holding that the assessment made for the year 1901, in the name of the Comptoir National D'Escompte de Paris plaintiffs and complainants herein on money at interest, all credits and all bills receivable for money loaned on interest, or advanced for goods sold $175,000 was an illegal assessment for the reason that said property was legally assessed under section 7 of act No. 170 of 1898, Statutes of Louisiana, inasmuch as the evidence shows that the property assessed consisted of written evidences of debt, in the concrete and tangible form of cheques representing money loaned at interest all of which were at the time of the assessment was made, and at the time the cause was tried, and still are in the possession of an agent of plaintiffs and complainants, residing in the city of New Orleans, and as such taxable under the laws of the State of Louisiana.

(2.)

The court erred in holding that the assessment and municipal tax levied thereon were illegal, and violative of the constitution and laws of the State of Louisiana, and the Constitution of t' e United States.

(3.)

The court erred in holding that the change made in the manner of doing business in 1901 by complainants and plaintiffs, was
90 not a shift to avoid taxation and to defraud the revenue of the city and the State when the circumstantial evidence adduced shows that such was the purpose and design, which cannot and should not be supported and maintained by a court of equity.

Wherefore respondents and defendants pray that the decree of this honorable court be reversed on the appeal to be herein granted.

(Signed) F. C. ZACHARIE,
Solicitor for Tax Collector, John Fitzpatrick.

(") E. K. SKINNER,
Att'y Board of Assessors.

(") SAM'L L. GILMORE,
City Attorney.

91 *Bond for Appeal.*

Filed Oct. 18, 1902.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Martin Behrman, president board of assessors, city of New Orleans, represented by George B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector 1st district of Orleans, and Joseph H. McEvoy, as surety are held and firmly bound, jointly and severally unto the Comptoir National D'Escompte de Paris in the sum of four hundred dollars (400), lawful money of the United States of America to be paid to the said Comptoir National D'Escompte de Paris, its heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves and each of us by himself and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the — day of —— in the year of our Lord nineteen hundred and two.

Whereas the said Martin Behrman, Geo. B. Penrose, and John Fitzpatrick, in their official capacities having heretofore to-wit, on the — day of —— 1902, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered on the ninth day of April 1902 by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Comptoir National D'Escompte de Paris *versus* Board of Assessors *et als.* No. 12.949 of the docket thereof.

Now the condition of the above obligation is, that if, the above bounden Martin Berhman, Geo. B. Penrose and John Fitzpatrick

shall prosecute said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of.

(S'g'd) MARTIN BEHRMAN. [L. S.]
JOHN FITZPATRICK,
Tax Collector.
GEO. B. PENROSE, *Treasurer.*
PAUL CAPDEVILLE, *Mayor.*
JOSEPH H. McEVOY, *Surety.*

Bond approved
(S'g'd) CHARLES PARLANGE,
U. S. Judge.

Oct. 18, 1902.

92 UNITED STATES OF AMERICA, } ss:
E. District of Louisiana, }

Personally appeared, Joseph McEvoy, who being duly sworn deposes and says that he is the surety on the within bond, that he resides in the city of New Orleans, State of Louisiana and is worth the full sum of four hundred ($400.) dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) JOSEPH H. McEVOY,
1901 *Tulane Ave.*

Subscribed and sworn before me this 17th. day of October, 1902.

(Signed) EMMET D. CRAIG,
U. S. Commissioner, E. District of Louisiana, at New Orleans, La.

[SEAL.]

93 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Comptoir National D'Escompte de Paris, through its proper officer or agent at New Orleans, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within 30 days from date hereof, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana wherein The State Board of Assessors, The State Tax Collector of 1st Municipal District of Orleans & George B. Penrose, treasurer of the city of New Orleans, and The City of New Orleans are defendants, respondents & appellants and The Comptoir National D'Escompte de Paris is complainant and appellee in suit No.

12949 U. S. circuit court for the eastern district of Louisiana to show cause, if any there be, why the judgment rendered against the said defendants respondents and appellants as in said cause, suit and case mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 18 day of October in the year of our Lord one thousand nine hundred and two.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

(Signed) *CHARLES PARLANGE, Judge.*

CLERK'S OFFICE.

A true copy of the original citation.

H. J. CARTER, *Clerk.*

New Orleans, La., October 18, 1902.

94 [Endorsed:] P. d'Orgeval, agt. E. Return. United States circuit court, eastern district of Louisiana. No. 12949. Comptoir National D'Escompte de Paris *vs.* Board of Assessors *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Oct. 20 1902 H. J. Carter clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Oct. 20, '02.

On this 20th day of October, 1902 before the undersigned authority personally appeared J. H. Patin, deputy U. S. marshal for the eastern district of Louisiana, known to me as such, who being duly sworn deposes and says that on the 20th day of October, 1902 affiant served this writ on the Comptoir Nationale D'Escompte de Paris by handing the same to the agent thereof Mr. P. d'Orgeval, in person, at the office of said company, in the city of New Orleans, Louisiana.

J. H. PATIN,
U. S. Deputy Marshal.

Sworn to and subscribed before me on this 20th day of October, 1902.

{ Seal of Henry J. Carter, U. S. Commissioner, E. Dist. of La., New Orleans, La. }

H. J. CARTER,
U. S. Commissioner.

95 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Henry J. Carter, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 94 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case of The Comptoir Nationale D'Escompte de Paris *versus* The City of New Orleans, *et als.* No. 12949 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5th day of November A. D. 1902.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify, that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court: That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 5th day of November A. D., 1902.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: File No. 18,732. E. Louisiana C. C. U. S. Term No. 157. The State Board of Assessors for the Parish of Orleans, The City of New Orleans *et al.*, appellants, *vs.* The Comptoir National D'Escompte de Paris. Filed November 11", 1902.